



TOWN OF KITTERY, MAINE

200 Rogers Road, Kittery, ME 03904
Telephone: (207) 475-1329 Fax: (207) 439-6806

May 16, 2016

Kittery Town Council
Requested by Chairperson Gary Beers
Special Meeting Agenda
6:00 p.m.

Council Chambers

1. CALL TO ORDER
2. INTRODUCTORY
3. PLEDGE OF ALLEGIANCE
4. ROLL CALL
5. DISCUSSION
 - a. Discussion by members of the public (only on item 6 below and three minutes per person)
 - b. Chairperson's response to public comments
6. NEW BUSINESS
 - a. (03216-1) The Kittery Town Council moves to receive presentations on proposals for the Town Manager search from the following firms:
 - Eaton & Peabody
 - Municipal Resources Inc.
 - Maine Municipal Association
 - b. (030216-2) The Kittery Town Council moves to select a firm for the Town Manager search process.
8. ADJOURNMENT

Workshop to Follow the Meeting

The Town Council will hold a joint workshop with the Town Manager, Planner and Planning Board to discuss Title 16 Code Amendments.

Posted: May 12, 2016



TOWN OF KITTERY
Planning and Code Enforcement
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cdimatteo@kitteryme.org

Christopher Di Matteo
Town Planner

MEMORANDUM

TO: CAROL GRANFIELD, INTERIM TOWN MANGER
FROM: CHRIS. DI MATTEO
SUBJECT: COUNCIL AND PLANNING BOARD JOINT WORKSHOP – MAY 16, 2016
TITLE 16 TOWN CODE AMENDMENTS
DATE: MAY 11, 2016

The following is a summary of the Title 16 amendments the Planning Board is recommending to the Town Council for adoption. In general these amendments will provide greater clarity, remove outdated references, and update provisions to allow for more conformance with the Town's Comprehensive Plan:

ITEM 1 – 16.10.3 – Development Plan Review and Approval Process; 16.10.3.2 Other Development Review; 16.10.3.4 Shoreland Development Review; 16.10.10 Shoreland Development Review; 16.10.10.1 Permits Required; 16.10.10.1.2 Permit Application; 16.10.10.2 Procedure for Administering Permits

- This group of amendments was developed to respond to the many review applications the Planning Board receives that do not include development within the 100 or 75-foot setback in the Shoreland Overlay Zone. The final draft takes into consideration comments from Town Council's review at the joint workshop held on February 1st, 2016, a public hearing held February 25th, 2016 and a review from MDEP. The Planning Board voted to recommend the amendments to Town Council following the February 25th public hearing.

ITEM 2 - 16.3.2.17.D – Shoreland Overlay Zone Standards; and 16.2.2 - Definitions

- The proposed amendment remove redundancies and improve consistency with regard to language and intention throughout the code. The final draft reflects revisions from an initial review with the Planning Board, held March 24th, 2016, and a review by MDEP to ensure compliance with state statutes. A public hearing was held on April 28th, 2016 and the Planning Board voted unanimously to recommend the amendment to Town Council.

ITEM 3 –16.2 Definitions; 16.8.8.2.3 Applicability; 16.10.7.2 Final Plan Application Submittal Content

- The proposed amendments provide clarity with regard to the Town's Municipal Separate Storm Sewer System (MS4) regulation for a Post-Construction Stormwater Management Plan. The final draft incorporate comments and suggestions provided by the Planning Board and Town Council at the joint workshop, held on February 1st, 2016. Final review of the amendments was held following a public hearing on February 25th, 2016. The Planning Board voted to recommend the amendments to Town Council at that date.

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ITEM 4 - 16.8.11 - Cluster Residential and Cluster Mixed-Use Development. 16.8.11.1 Purpose; 16.8.11.3 Dimension Standards Modifications; 16.8.11.5 Application Procedure; 16.8.11.6 Standards; 16.8.20.1 Green Strip; 16.9.1.7 Buffer areas; and 16.2.2 Definitions

- This group of amendments were developed to provide clarity with regard to open space and other requirement standards in cluster residential and cluster mixed-use developments. They were reviewed at a joint Town Council & Planning Board workshop, held May 28th, 2015 (minutes attached), and February 1st, 2016, and revised to address comments from Town Council. Two public hearings were held January 28th and April 28th, 2016. During the second public hearing, written testimony was submitted to Staff & Planning Board Chair by Jeff Clifford (testimony attached). The Planning Board determined a review of the comments by the Town attorney would be appropriate, prior to a recommendation to Town Council. At the time of assembling packet material, the Town attorney has not completed their review, however a response is anticipated by the date of the scheduled joint workshop. The Planning Board is postponing a vote to recommend to Town Council, pending a review of the Town attorney's comments.

ITEM 5 - Table 1 – chapter 16.8, Article IV – Design and Construction Standards for Streets and Pedestrian Ways

- The proposed amendment eliminates “can be emergency only” from the second access standard for secondary collectors on public streets. In addition, the amendment includes the removal of “primary collectors” from Class III private streets. The amendment was introduced for initial review on March 24th, 2016. The Planning Board voted to recommend for adoption following the April 28th, 2016 public hearing.

ITEM 6 - 16.3.2.15.A - Mixed Use – Kittery Foreside Purpose; 16.3.2.15.D -Standards; 16.3.2.15.F – Design Review

- The proposed amendment removes Design Review regulations from the Mixed Use – Kittery Foreside zone. The Planning Board completed an initial review of this amendment on 4/28/2016. A public hearing is scheduled for 5/26/2016.

ITEM 7 – Animal control measures in Title 6 and Title 16

- The Code Enforcement Officer has requested a review of ordinances and zoning concerning animal control, specifically the care of domestic chickens. The Planning Board had a preliminary discussion on April 28th, 2016 (minutes attached). The Planning Board would like to discuss the appropriate location within Title 6 Animal Control and Title 16 Land Use & Development Code to address this concern.

16.2.2 Definitions.**Development** means:

- 1) a change in land use involving alteration of the land, water or vegetation, or
- 2) the addition or alteration of structures or other construction not naturally occurring.

Article III. Development Plan Review and Approval Process**16.10.3.1 General Development, Site, and Subdivision Plans Review.**

All proposed development including site, subdivision, business use and other development must be reviewed for conformance with the procedures, standards and requirements of this Code by the Planning Board except as provided herein, but in all cases by the Town Planner and Code Enforcement Officer and where required the Board of Appeals as provided herein.

16.10.3.2 Other Development Review.

~~An applicant or applicant's authorized agent must obtain Planning Board approval in accordance with this Code for all development except the following, unless located within the Shoreland Overlay or Resource Protection Overlay Zones:~~ Unless subject to a Shoreland Development Plan Review per 16.10.3.4, the following does not require Planning Board approval:

- A. ~~Single and duplex family dwellings, except if within either a Shoreland or Resource Protection Overlay Zone, in addition to other criteria specified in Article X of Chapter 16.10, applicable to the granting of a special exception use request, the Planning Board must review and may approve a development plan for a one to two family residential structure, provided the applicant meets all of the applicable Design and Performance Standards.~~
- B. Expansion of existing use where the expanded use will require fewer than six additional parking spaces.
- C. Division of land into lots (i.e., two lots) which division is not otherwise subject to Planning Board review as a subdivision.
- D. Business use as provided in Section 16.4.3.5.

16.10.3.4 Shoreland Development Review.

A. All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones involving the use, expansion, change or replacement of an existing use or structure, or renewal of a discontinued non-conforming use must be reviewed and approved as provided in 16.10.10 and elsewhere in this Code, and tracked as a shoreland development for reporting purposes.

B. All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones must be approved by the Planning Board except for the following:

1. Proposed development of principal and accessory structures in compliance with 16.3.2.17.D.2. when not subject to Planning Board review as explicitly required elsewhere in this Title. Such proposed

development must be reviewed and approved by the Code Enforcement Officer (CEO) prior to issuing a building permit. The total devegetated area of the lot (that portion within the Shoreland Overlay Zone) must be calculated by the applicant and verified by the CEO and recorded in the Town's property records. Any development proposed in the Resource Protection and Stream Protection Overlay Zones must be approved by the Planning Board.

2. Piers, docks, wharfs, bridges and other structures and uses extending over or below the Highest Annual Tide (HAT) elevation, subject to review and approval by the Port Authority as outlined in Title 16.11 Marine related development.

3. Division of a conforming parcel that is not subject to subdivision as defined in 16.2.2.

4. Clearing of vegetation for activities other than timber harvesting. These are subject to review and approval by the Shoreland Resource Officer or Code Enforcement Officer.

Article X. Shoreland Development Review

16.10.10.1 General.

16.10.10.1.1 Permits Required.

A. After the effective date of this code, no person may, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the shoreland or resource protection overlay zones in which such activity or use would occur, or expand, change or replace an existing use or structure, or renew a discontinued nonconforming use.

B. When replacing an existing culvert, the watercourse must be protected so that the crossing does not block fish passage, and adequate erosion control measures must be taken to prevent sedimentation of the water in the watercourse.

C. A permit is not required for the replacement of an existing road culvert provided the replacement culvert is not:

1. More than one standard culvert size larger in diameter than the culvert being replaced,
2. More than twenty-five (25) percent longer than the culvert being replaced, and
3. Longer than seventy-five (75) feet.

D. A permit is not required for an archaeological excavation provided the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

E. Any permit required by this Section is in addition to any other permit required by other law or ordinance.

16.10.10.1.2 Permit Application.

A. Every applicant for a Shoreland Development Review permit must ~~complete~~ and submit a completed ~~Kittery~~ application form and a site plan drawn to scale as indicated in Section 16.10.5.2B, to the Code Enforcement Officer ~~appropriate official as indicated in Section 16.10.5.2B~~.

B. All applications must be signed by the owner, ~~owners or lessee of the property or other person authorizing the work, certifying that the information in the application is complete and correct. If the person signing the application is not the owner or lessee of the property then that person must submit a letter of authorization from the owner or lessee.~~ or a person or agent with written authorization from the owner, to apply for a permit hereunder, certifying that the information in the application is complete and correct.

C. All applications must be dated, and the Code Enforcement Officer, ~~Town Planner, Town Clerk or Kittery Port Authority, as appropriate~~ or designee, must note upon each application the date and time of its receipt ~~by each~~.

D. Whenever the nature of the proposed structure requires the installation of a subsurface sewage disposal system, a completed application for a subsurface wastewater disposal permit must be submitted. The application must include a site evaluation approved by the Plumbing Inspector.

16.10.10.2 Procedure for Administering Permits.

Within thirty five (35) days of the receipt of a written application, the Town Planner for Planning Board review or Code Enforcement Officer for all other review, and as indicated in Section 16.10.5.2B3.4, must notify the applicant in writing that the application is or is not complete. If the application is incomplete, the written notification must specify the additional material required to complete the application.

A. The Code Enforcement Officer is required to approve, approve with conditions or deny all permit applications in writing within thirty-five (35) days of receiving a completed application.

B. If the Planning Board has a waiting list of applications, a decision on the application will occur within thirty-five (35) days after the first available date on the Planning Board's agenda following receipt of the completed application, or within thirty-five (35) days of the public hearing, if one is held.

C. Permits will be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this section.
The applicant is required to demonstrate, to the satisfaction of the reviewing authority, that the proposed land use activity is in conformance with the purposes and provisions of this Code.

D. An application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated that the proposed use will:

1. maintain safe and healthful conditions;
2. not result in water pollution, erosion or sedimentation to surface waters;
3. adequately provide for the disposal of all wastewater;
4. not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. protect archaeological and historic resources;

- 146 7. not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/
147 maritime activities district;
- 148 8. avoid problems associated with floodplain development and use
- 149 9. is in conformance with the provisions of this Code; and
- 150 10. recorded with the York County Registry of Deeds.
- 151

D. Standards. (Effective 2/28/15)

1. Minimum lot standards

a. Minimum lot size by base zone, within the

Residential–Village (R-V) zone	8,000 square feet
Residential–Urban (R-U) zone	20,000 square feet
Residential–Rural (R-RL), Residential–Suburban (R-S) and Residential–Kittery Point Village (R-KPV) zones	40,000 square feet
Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L) and Business-Local 1 (B-L1) zones	60,000 square feet
Residential-Rural Conservation (R-RLC) zone	80,000 square feet
Business-Park (B-PK) zone	120,000 square feet
Mixed-Use Badgers Island (MU-BI) zone	6,000 square feet
Mixed-Use Kittery Foreside (MU-KF) zone	10,000 square feet

b. Minimum land area per dwelling unit by base zone, within the

Residential–Village (R-V) zone	8,000 square feet
Business-Park (B-PK) zone	10,000 square feet
Residential–Urban (R-U), Business-Local (B-L) and Business-Local 1 (B-L1) zones	20,000 square feet
Mixed Use (M-U), Residential–Rural (R-RL), Residential–Suburban (R-S) and Residential–Kittery Point Village (R-KPV) zones	40,000 square feet.
Residential-Rural Conservation (R-RLC) zone	80,000 square feet.
Mixed-Use Badgers Island (MU-BI) zone	6,000 square feet
*3,000 square feet for the first two dwelling units	
Mixed-Use Kittery Foreside (MU-KF) zone	10,000 square feet

c. Minimum Shore frontage by base zone per lot and dwelling unit

Mixed Use-Badgers Island (MU-BI)	25 feet
Residential-Village (R-V), Residential Urban (R-U), and Mixed-Use Kittery Foreside (MU-KF) zones	50 feet
Mixed Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND), Business-Park (B-PK), Business-Local (B-L) and Business-Local 1 (B-L1) zones (shore frontage per lot)	150 feet
(shore frontage per dwelling unit)	50 feet
Residential-Rural (R-RL), Residential-Suburban (R-S), and Residential-Kittery Point Village (R-KPV) zones	
(shore frontage per lot)	150 feet
(shore frontage per dwelling unit)	100 feet
Residential-Rural Conservation (R-RLC) zone (per lot and dwelling unit)	250 feet

The minimum shore frontage requirement for public and private recreational facilities is the same as that for residential development in the respective zone.

d. The total footprint of ~~areas~~ devegetated area ~~for structures, parking lots and other impervious surfaces,~~ must not exceed twenty (20) percent of the lot area located within the Shoreland Overlay Zone, ~~including existing development,~~ except in the following zones:

- i. Mixed Use -Badgers Island (MU-BI) and Mixed Use Kittery Foreside (MU-KF) Zones, where the maximum lot coverage devegetated area is sixty (60) percent. The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot coverage in the Mixed Use -Badgers Island (MU-BI) zone to seventy (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.
- ii. Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1), and Industrial (IND) Zones where the maximum lot coverage devegetated area is seventy (70) percent.
- iii. Residential – Urban (R-U) Zone where the lot is equal to or less than ten thousand (10,000) square feet, the maximum devegetated area is fifty (50) percent. ~~Notwithstanding the above limits, vegetated surfaces must exceed fifty (50) percent of the lot area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the Residential – Urban Zone (R-U) and the Shoreland Overlay Zone.~~
- iv. ~~In the Shoreland Overlay zone within the Mixed Use (M-U) zone, the maximum lot coverage is 20%.~~

2. Principal and Accessory Structures – Setbacks and Development.

a. All new principal and accessory structures (except certain patios and decks per Section 16.3.2.17.D.2.b.) must be set back as follows:

- i. At least one hundred (100) feet, horizontal distance, from the normal high water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any water bodies, or the upland edge of a wetland on the Mixed Use - Badgers Island and the Kittery Foreside Zones, unless modified according to the terms of Sections 16.3.2.14.D & E and 16.3.2.15.D & E, ~~except that in the Commercial Fisheries/Maritime Uses Overlay Zone there is no minimum setback requirement.~~ In the Resource Protection Overlay Zone the setback requirement is 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in the zone, in which case the setback requirements specified above apply. The water body, tributary stream, or wetland setbacks do not apply to structures that require direct access to the water body or wetland as an operational necessity, such as piers and retaining walls, nor does it apply to other functionally water-dependent uses, as defined in 16.2.2.

87 ~~ii. The water body, tributary stream, or wetland setback provision does not apply to structures which~~
88 ~~require direct access to the water body or wetland as an operational necessity, such as piers and retaining~~
89 ~~walls, nor does it apply to other functionally water-dependent uses.~~

90
91 b. Accessory patios or decks no larger than five hundred (500) square feet in area must be set back at
92 least seventy-five (75) feet from the normal high water line of any water bodies, tributary streams, the upland
93 edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks must satisfy
94 the normal setback required for principal structures in the Shoreland Overlay Zone.

95
96 c. If there is a bluff, setback measurements for principal structures, water and wetland must be taken from
97 the top of a coastal bluff that has been identified on Coastal Bluff maps as being "highly unstable" or
98 "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published
99 on the most recent Coastal Bluff map. If the applicant and Code Enforcement Officer are in disagreement
100 as to the specific location of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located,
101 the applicant is responsible for the employment a Maine Registered Professional Engineer, a Maine
102 Certified Soil Scientist, or a Maine State Geologist qualified to make a determination. If agreement is still
103 not reached, the applicant may appeal the matter to the Board of Appeals.

104
105 d. Public access to the waterfront must be discouraged through the use of visually compatible fencing
106 and/or landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer.
107 The planting or retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery along
108 the perimeter of the protective buffer is encouraged as a landscape barrier. If hedges are used as an
109 element of a landscape barrier, they must form a solid continuous visual screen of at least three feet in
110 height immediately upon planting.

111
112 e. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to
113 place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the
114 Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the
115 storage of yard tools and similar equipment. Such accessory structure must not exceed eighty (80) square
116 feet in area nor eight (8) feet in height, and must be located as far from the shoreline or tributary stream as
117 practical and meet all other applicable standards, including lot coverage and vegetation clearing limitations.
118 In no case will the structure be allowed to be situated closer to the shoreline or tributary stream than the
119 existing principal structure.

120
121 f. The lowest floor elevation or openings of all buildings and structures, including basements, must be
122 elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence
123 of these, the flood as defined by soil types identified as recent flood-plain soils.

124
125 ~~g. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must~~
126 ~~not exceed twenty (20) percent of the lot area, including existing development, except in the following~~
127 ~~zones:~~

128
129 ~~i. Badgers Island and Kittery Foreside Zones, where the maximum lot coverage is sixty (60) percent. The~~
130 ~~Board of Appeals may approve a miscellaneous appeal application to increase allowable lot coverage in~~
131 ~~the Badgers Island district to seventy (70) percent where it is clearly demonstrated that no practicable~~
132 ~~alternative exists to accommodate a water-dependent use.~~

~~ii. Commercial (C-1, C-2, C-3), Mixed Use (MU), Business Local (B-L and B-L1), and Industrial (IND) Zones where the maximum lot coverage is seventy (70) percent.~~

~~Notwithstanding the above limits, non-vegetated surfaces must not exceed fifty (50) percent of the lot area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the Residential Urban Zone (R-U) and the Shoreland Overlay Zone. [\[See 16.3.2.17.D.1.d\]](#)~~

~~h.g.~~ Stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided the:

i. structure is limited to a maximum of four feet in width;

ii. structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S. §480-C); and

iii. applicant demonstrates that no reasonable access alternative exists on the property.

i. If more than one dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel in the Shoreland Overlay zone, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

16.2.2 Definitions

Devegetated Area means all areas devegetated for structures, parking lots and other impervious surfaces.

1 **16.2.2 Definitions.**

2
3 **Post-Construction Stormwater Management Plan** means an Inspection and Maintenance Plan as
4 required by rule for projects that require approval by the Maine Department of Environmental Protection
5 (MDEP) under Chapter 500, Stormwater Management in Maine; or a plan to inspect and maintain Best
6 Management Practices (BMPs) and Stormwater Management Facilities employed by a new development
7 or redevelopment, not subject to MDEP Chapter 500 rules, to meet the stormwater standards of the
8 ~~municipality's subdivision, site plan, or other zoning, planning or other land use ordinances~~ Town or this
9 Code.

10
11 **16.8.8.2.3 Applicability.**

12
13 A. In General.
14 This Section applies to all new development or ~~construction~~ redevelopment (any construction activity on
15 premises already improved that does alters stormwater drainage patterns) activity including one acre or
16 more of disturbed area, or activity with less than one acre of total land area that is part of a subdivision, if
17 the subdivision will ultimately disturb an area equal to or greater than one acre. ~~and; redevelopment or~~
18 ~~construction activity on premises already improved with buildings and structures or activities or uses, but~~
19 ~~does not include activities such as exterior remodeling.~~

20
21
22 **16.10.7.2 Final Plan Application Submittal Content.**

23
24 R. Stormwater management plan for stormwater and other surface water drainage prepared by a registered
25 professional engineer including the location of stormwater and other surface water drainage area; a Post-
26 Construction Maintenance Stormwater Management Plan ~~and Agreement~~ that defines maintenance
27 responsibilities, responsible parties, shared costs, and schedule for maintenance; a draft Maintenance
28 Agreement for Stormwater Management Facilities, and where applicable, draft documents creating a
29 homeowners association referencing the Maintenance responsibilities. Where applicable, ~~a~~ the Maintenance
30 Agreement must be included in the Document of Covenants, Homeowners Documents and/or as riders to
31 the individual deed and recorded with the York County Registry of Deeds.
32

Article XI. Cluster Residential and Cluster Mixed-Use Development. (Ordained 9/24/12; effective 10/25/12)

16.8.11.1 Purpose.

To implement adopted Comprehensive Plan policies regarding the Town's natural, scenic, marine, cultural and historic resources, land use patterns and recreation and open space, this Article is intended to encourage and allow new concepts and innovative approaches to housing/commercial development and environmental design so development will be a permanent and long-term asset to the Town, while in harmony with the natural features of the land, water and surrounding development. Objectives include:

- A. efficient use of the land and water, with small networks of utilities and streets;
- B. preservation of contiguous, unfragmented open space and creation of recreation areas;
- C. maintenance of rural character, by means of preserving farmland, forests and rural view ~~sheds~~ scapes, and limiting development in close proximity to existing public streets, especially along scenic roads, as designated in the 1999 Update of the Kittery Comprehensive Plan, adopted 2002;
- D. preservation of areas with the highest ecological value;
- E. location of buildings and structures on those portions of the site most appropriate for development;
- F. creation of a network of contiguous open spaces or 'greenways' by linking the common open spaces within the site and to open space on adjoining lands wherever possible;
- G. reduction of impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff;
- H. preservation of historic, archaeological, and cultural features; and
- I. minimization of residential development impact on the municipality, neighboring properties, and the natural environment.

16.8.11.3 Dimensional Standards Modifications.

Notwithstanding other provisions of this Code relating to dimensional standards, the Planning Board, in reviewing and approving proposed residential or mixed-use development under this Article, may modify said the dimensional standards listed in Cluster residential development in 16.2.2. Definitions, to permit flexibility in approaches to site design in accordance with the Code standards. The Board may allow subdivision or site development with modified dimensional standards where the Board determines the benefit of a cluster development is consistent with the Code. Such modifications may not be construed as granting variances to relieve hardship.

16.8.11.5 Application Procedure.

All development reviewed under this Article is subject to the application procedures in Chapter 16.10, Development Plan Application and Review, and the following:

- A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the Sketch Plan:

1. Calculations and maps to illustrate:

- a. proposed dimensional modifications and the dimensional standards required in the zone in which the development will be located;
- b. All land area identified in Title 16.7.8 Net Residential Acreage; and (Ordained 9-28-15)
- c. Net Residential Density; and
- d. open space as defined in Section 16.8.11.6.D.2 of this Article.

2. A map showing constraints to development, such as, but not limited to, wetlands, resource protection zones, shoreland zones, deer wintering areas, side slopes in excess of ~~thirty-three percent (33%)~~ twenty percent (20%), easements, rights-of-way, existing roads, driveway entrances and intersections, existing structures, and existing utilities.

3. A written statement describing the ways the proposed development furthers the purpose and objectives of this Article, including natural features which will be preserved or enhanced. Natural features include, but are not limited to, moderate-to-high value wildlife and waterfowl habitats, important agricultural soils, moderate-to-high yield aquifers and important natural or historic sites worthy of preservation.

4. The location of each of the proposed building envelopes. Only developments having a total subdivision or site plan with building envelopes will be considered.

5. A sketch plan showing a conventional nonclustered subdivision layout that complies with all applicable standards, excluding those included in this Article. The Planning Board may use this plan in addition to the proposed cluster site design to determine if the overall design is consistent with the purpose of this Article, applicable provisions of this Title and the growth designations of the 1999 Update of the Kittery Comprehensive Plan, adopted 2002. This determination may result in a change to the total number of lots/dwelling units allowed.

[NOTE: THE EXISTING SECTION 16.8.11.5.B IS NOT BEING AMENDEND]

16.8.11.6 Standards.

E. Open Space Requirements:

1. Open space must ~~contain equal~~ equal at least 50% of the total area of the property, ~~and no less than 30% of the total net residential acreage, as defined~~ and must include no less than 50% of the property's total net residential acreage. Where there is access to town sewer or it is demonstrated to the Planning Board that, due to the limited size of the parcel, requiring a minimum of 50% of the property's total net residential acreage to be contained in open space results in an unreasonable development constraint, the minimum total net residential acreage requirement may be reduced to 30%.

2. Total calculated open space must be designated as follows (See Open Space definitions Section 16.2): a. Open Space, Reserved; b. Open Space, Common; and/or c. Open Space, Public

3. The use of any open space may be further limited or controlled by the Planning Board at the time of final approval, where necessary, to protect adjacent properties or uses.

4. Open space must be deeded in perpetuity for the recreational amenity and environmental enhancement of the development and be recorded as such. Such deed provisions may include deed/plan restrictions, private covenants, or arrangements to preserve the integrity of open spaces and their use as approved by the Planning Board.

5. Open space must also be for preserving large trees, tree groves, woods, ponds, streams, glens, rock outcrops, native plant life, and wildlife cover as identified in applicant's written statement. In the Business Park (BP) zone, open space may be both man-made and natural. Man-made open space must be for the development of recreational areas, pedestrian ways and aesthetics that serve to interconnect and unify the built and natural environments.

~~6. Open space should be in a contiguous form of unfragmented land to protect natural resources, including plant and wildlife habitats.~~

~~[INCORPORATED IN NEW SUBSECTION 7(d) BELOW]~~

~~7.6.~~ A portion of the open space should be in close proximity to other open spaces used for recreation (e.g. a common green, multi-purpose athletic field, gardens, and playgrounds).

~~7. Reserved open space must preserve areas with the highest ecological value. The final composition, configuration and location of the reserved open space is determined by the Planning Board after considering the applicant's objectives, the parcel's configuration and its relation to natural resources on adjoining and neighboring properties. The Planning Board shall also consider whether:~~

~~a) the majority of the land is wetland, floodplain, and areas of slopes 20% or greater;~~

~~b) the land is identified on specialized mapping such as that prepared by *Beginning with Habitat*;~~

~~c) existing open space is located on adjacent or nearby properties;~~

~~d) the size and shape is contiguous and unfragmented to the extent necessary to achieve the conservation objective;~~

~~e) the land has critical habitat or conservation area as identified by Maine Department of Inland Fisheries and Wildlife, Maine Department of Environmental Protection, Army Corps of Engineers, or the U.S. Fish and Wildlife Service; and~~

~~f) the land is identified as a conservation priority by the Kittery Open Space Committee, Kittery Land Trust or other land trust.~~

I. The developer must take into consideration the following points, and illustrate the treatment of buildings, structures, spaces, paths, roads, service and parking areas, recreational facilities, and any other features determined by the Planning Board to be a part of the proposed development.

1. Orientation. Buildings, view ~~points~~ corridors and other improvements are to be designed so scenic vistas viewsheds and natural features are integrated into the development. Buildings should be sited to consider natural light and ventilation.

2. Utility Installation. All utilities are to be installed underground, wherever possible. ~~The Planning Board must require the developer to adopt a prudent avoidance approach when permitting above ground electrical service installations.~~ Transformer boxes, pumping stations and meters must be located so as not to be unsightly or hazardous to the public.

3. Recreation. Facilities must be provided consistent with the development proposal. Active recreation requiring permanent equipment and/or modification of the site may not be located within the wetland setback areas or contiguous reserved open space areas.

4. Buffering. Planting, landscaping, form and siting of building and other improvements, or fencing and screening must be used to integrate the proposed development with the landscape and the character of any surrounding development. A buffer not less than 100 feet in depth must be provided along the street frontage adjacent to scenic roadways, as identified in the 1999 Update of the Kittery Comprehensive Plan, adopted 2002, and 50 feet in depth for all other public streets. Where the portion of the development does not abut a street, the side and rear yard setbacks must include a buffer no less than 20 feet in depth. All or a portion of the existing vegetation may be used in lieu of new plantings for the buffer area as determined by the Planning Board.

5. Development Setbacks.

Setbacks from wetlands and water bodies, must demonstrate compliance to Table 16.9 of Chapter 16.9.4.3. These setbacks must be permanently maintained as no cut, no disturb buffer areas. If the setback areas ~~are not of substantial vegetation to~~ do not provide a sufficient buffer, the Planning Board may require additional plantings. The most restrictive setback applies in determining the buffer area.

Article XX Subdivision Noise Pollution Buffer [RESERVED]

~~16.8.20.1 Green Strip.~~

~~Subdivision design must minimize the possibility of noise pollution either from within or without the development (from highway or industrial sources) by providing and maintaining a green strip at least twenty (20) feet wide between the abutting properties that are so endangered.~~

{MODIFIED AND MOVED TO 16.9.1.7.B}

16.9.1.7 Buffer and Buffer areas.

A. Any nonresidential yard setback space abutting an existing or potential residential area ~~shall~~ must be maintained as a buffer area, as defined in 16.2.2, ~~strip~~ by the developer and subsequent owners. Such buffer area ~~shall be~~ is for the purpose of eliminating any adverse effects upon the environmental or aesthetic qualities of abutting properties, ~~or any type of nuisance affecting~~ impacts to the health, safety, welfare and property values of the residents of Kittery. The Planning Board or Board of Appeals may require an increase to the size of the buffer area and/or establish a buffer, as defined in 16.2.2, if yard

area is insufficient to mitigate the potential adverse effects as determined by the Board.

B. Subdivision development must minimize the possibility of noise pollution either from within or from outside the development (from highway or industrial sources) by providing and maintaining a buffer or buffer areas as described in subsection A. above.

C. Subdivision development must provide and maintain a buffer or buffer area of no less than fifty (50) feet deep along the frontage of existing streets not included within the proposed development.

D. The Planning Board may reduce or waive the buffer requirement in areas where the Board determines that a buffer would have an adverse effect on existing scenic viewsheds or public safety.

16.2.2 Definitions

Cluster residential development means a form of development ~~land use improvements and/or change~~ in which the dimensional ~~requirements~~ standards are reduced below those ~~that normally required in the~~ by the land use zoning regulations ~~district in which the land use improvements and/or change is located,~~ in exchange for the creation of permanent open space for recreation areas, the preservation of environmentally sensitive areas, agriculture and silviculture, and for the reduction in the size of road and utility systems. ~~return for the provision to set aside a portion of the tract as of permanent open space and other environmental enhancements.~~ Permanent open space is owned and maintained jointly in common by individual lot/unit owners, the Town, or a land conservation organization. For the purpose of this definition "dimensional standards" means and is limited to ordinance provisions relating to lot area, building coverage, street frontage and yard setback requirements.

Viewpoint means a place from which the surrounding landscape or scenery can be viewed or observed.

Viewshed means those parts of a landscape that can be seen from a particular point.

**TOWN OF KITTERY, MAINE
PLANNING BOARD WORKSHOP
Council Chambers**

**May 28, 2015
7:00 PM**

Title 16.8.11 – Cluster Residential and Cluster Mixed-Use Development

Board members present: Chair Ann Grinnell, Vice Chair Karen Kalmar, Secretary Deborah Driscoll Davis, Mark Alesse, Robert Harris, David Lincoln.

Staff present: Chris Di Matteo, Town Planner; Elena Piekut, Assistant Town Planner.

Committee members present: Christine Bennett, Kittery Open Space Advisory Committee (KOSAC) and Kittery Land Trust; Karen Young, KOSAC and Mt. Agamenticus to the Sea Conservation Initiative; Meghan Kline, KOSAC; Steve Hall, KOSAC and Kittery Conservation Commission; Craig Wilson, KOSAC; Herb Kingsbury, Conservation Commission; Page Mead, KOSAC.

Ms. Kalmar, Ms. Piekut, and Mr. Di Matteo began the meeting with introductions, an agenda, and overview. The group discussed many points, summarized chronologically below.

- No cut, no disturb buffers should be reworded. We used to reference the table for wetland setbacks. We should make it clear that it's about the maximum amount of protection. (Di Matteo, lines 174-184) "Where two setbacks overlap, the more restrictive applies." (Kalmar)
- What is the intention of the waterfront access provision? Active recreation? Or conservation? (Di Matteo, 143)
- 174 is talking about wetland setbacks only, but maybe refer to front and side as well. The DEP requires no-cut vegetated buffers, and all of the Lewis Farm subdivision setbacks (including front and side) are vegetated and must remain vegetated (Wilson)
- Create a standard of maintaining existing vegetation where possible. That was a big goal of Lewis Farm. The wetlands are an easy one to use across the parcel. Some towns require a buffer around the whole parcel. (Di Matteo)
- I would encourage us to keep as much vegetation with as many rationales as possible. A 60' x 100' house site is already a lot of vegetation. (Wilson)
- Lewis Farm as a clustered subdivision is too spread out, not clustered enough, with multiple clusters that fragmented a large lot. (Wilson)
- These developments are largely motivated by profit (Grinnell). But allowing and even requiring cluster subdivisions saves a developer money in infrastructure investment (Piekut). And that saves the Town in infrastructure maintenance and providing services (Grinnell). People may also pay more for lots with common open space (Piekut).
- Commonly held land on water should be more for conservation than for active boating (Grinnell, line 143). Wetlands could be treated separately from a water body good for recreation (Kalmar).
- Part of the intent of maintaining water access for recreation is so that there is one communal dock, not nine individual ones, so that recreation is clustered too (Wilson).
- So we agree that this standard is geared toward recreation, not conservation (Di Matteo)
- Motorized boats shouldn't be allowed where there's mud at low tide (Davis).
- York requires that open space be laid out, and special features be identified, before the subdivision layout is designed. If the goal is to preserve in common the land with the greatest

ecological and cultural values, then that's a logical order (Young). Perhaps under application procedures we can spell out a methodical way to approach this (Di Matteo). They also require the developer to be designed with the proposed holder of the open space (Young).

- Is the common land of a subdivision open only to the residents or everyone? (Kingsbury) It depends. It's possible to be public. They would have to petition the Town to accept it and in some places it would be disastrous. It should be site specific but it's a possibility (Kalmar).
- We want to map current open spaces and potential open spaces and could then determine where best to petition for public acceptance/access. Public use in an isolated situation doesn't necessarily work (Di Matteo).
- Whether there's public access or not, just to have the open space between parcels and between subdivisions connected makes it all more meaningful from a habitat and water resource protection perspective, instead of making islands of open space (Bennett). That's a standard we don't have—the goal of locating open space near other open space. There's some language but it could be clearer (Di Matteo). It's not very strongly worded (Piekut). It's not clear what "contiguous" means (Kalmar).
- What's the difference between "open space" and a conservation easement? (Grinnell) Conserved land is held by a conservation organization and is permanently conserved, as opposed to open space that is associated with a cluster subdivision and is held by a homeowner's association and not conserved in the same way or for the same purposes (Young). High probability of people in the subdivision encroaching on the open space from their lots—how does the town deal with that? (Mead) Monitoring is a concern. In York, York Land Trust has declined to hold land with too many abutters to avoid spending their time managing multiple encroachments, which is why it's important to have the land holder involved in open space design (Young). Open space should be marked because people don't read their documents (Davis). We should strengthen the notion of the management plan (intent, how managed) and make it a part of homeowner's association covenants. Or find a partner like the municipality or a land trust (Di Matteo).
- A long time ago there was a plan to put up small plaques to delineate open space. What happened? (Grinnell) It got shot down by the Planning Board (Hall). There are some at Shepard's Cove (Kingsbury). At Lewis Farm you only own your little piece of ground and the rest is commonly held, so it's not very difficult. It is difficult to say which areas are more sensitive (Wilson).
- DEP now requires that stormwater buffers be demarcated in some way. An individual homeowner can own a DEP buffer and in many cases they do so those are very important to understand (Wilson). Snow shouldn't be stored on those (Davis).
- Have we considered have a third party inspect these open spaces? (Kingsbury) It's in the ordinance now. There's supposed to be an annual report to the town (Kalmar). I'm not sure any clusters have done it (Wilson). We haven't seen much (Di Matteo). I don't think the form exists yet (Bennett).
- A baseline document should be created, for the Code Enforcement Office to hold, which contains pictures and existing conditions at the time of permitting, so that encroachments can be identified (Bennett). Maybe we could make that retroactive? (Grinnell) There could be a fee to cover the Code Enforcement time (Davis). Could also include GPS points (Mead).
- Discussion of responsibilities and punishment for violations. Easy to find a violation per ordinance, but there's no specific fine (Di Matteo).
- Does the Town get a copy of homeowner's association documents? (Grinnell) We get a draft at the Planning Board and then they record it (Di Matteo) and then they get recorded with each deed

(Grinnell). The Planning Board is approving it for things related to public improvements and code-related concerns, but any self-restricted portions shouldn't be reviewed by the Board. The Assessor's Department gets a record of deeds each month (Di Matteo). It's not happening that way (Harris).

- KOSAC provided a memo containing several recommendations.
- We should increase 30% of net residential acreage included in the open space to 50%. An argument is that where there is no sewer, cluster subdivision allows the lot size to be cut down by half (from 40,000sf to 20,000sf), so half of the net residential acreage can be saved (Wilson and KOSAC). We started this conversation after the ordinance first came into effect, and the 44-lot Stone Meadow cluster subdivision was proposed, which was visually shocking and didn't look like a cluster subdivision. A lot of what we talked about with that 50% was in the Rural Residential and Rural Conservation Zones. In the Suburban Zone and Mixed Use Zone, I don't think 50% is necessary. These are areas where we want to infill and there is the infrastructure to support public safety with water and sewer (Bennett).
- Conservation is an important goal for open space but it's not the only goal—active recreation especially in the urban areas has its own benefits (Di Matteo).
- I agree it was surprising that the initial Stone Meadow proposal met the letter of the code (Di Matteo). Would it have been if we had required them to come forward with a standard subdivision plan first? (Davis) It's hard to say but you may have not had as many units. This was also an extension of a roadway so that was a piece of it (Di Matteo). The code is so vague that emergency roads have only been used to circumvent road length limitations and I would suggest that emergency roads be specifically required by emergency services (Kalmar). As a counterpoint to that, road length was initially developed from the models from a public safety standpoint, presuming a fire department couldn't service more than 1500 feet. Now we need to talk about road lengths in terms of fragmentation. The rationale has changed. It should be in purpose statement for road standards (Wilson). The legislative intent is to preserve unfragmented land (Kalmar). It's codified that the intent is to have dead-end roads in residential areas which I think is misplaced. You need to develop thoroughfares in the sense that they get you from point A to point B rather than a dead end in some places, because when you have all dead ends the existing thoroughfares can't sustain the growth (Di Matteo). Having streets that are connected disperses traffic (Piekut). Consider that people will use through roads a cut-through—Love Lane is a racetrack (Mead). This is how we end up with issues like the hodge-podge at Highpointe Circle (Grinnell).
- The suggestion that the Kittery Land Trust be added in the ordinance as a possible holder of open space—although they won't want every piece—could relieve some of the monitoring burden on the Town (Piekut). Does the Town have the capacity to hold open space? (Grinnell) In the code it is an option (Piekut, line 205). Should be Kittery Land Trust or another nonprofit conservation organization (Hall). Does the Town hold any of those now? (Grinnell) We already have ball fields, etc. (Wilson). The KLT does hold one (Young). The Town may hold some land behind the Post Office (Davis).
- In order to keep development concentrated near roads and infrastructure, consider an overlay zone in the first 300 to 500 feet from the road in rural areas where houses will be clustered, and beyond that require much less density (Wilson/KOSAC). This might result in losing the experience of a roadway as rural. Consider this especially with scenic byways (Di Matteo). You might also consider a limit on how far roads can penetrate into a site, say 500 feet (Wilson). You

could allow development 500 feet in but preserve the 100 feet closest to the road (Davis). Should also encourage shared driveways and “stacked lots” to prevent eating up road frontage (Wilson).

- Table of examples I prepared was an exercise in studying the existing ordinance and shows how it would be applied in several situations. It compares a conventional and a clustered subdivision in each example. The exercise illustrated several things. Consider changing the minimum land area per dwelling unit in the Suburban Zone, where sewer service is expanding. It also shows how you end up with “extra” usable land area after meeting the minimum lot size for all lots permitted, so consider the concept of maximum lot size and maximum density presented by GrowSmart Maine, being used in Cape Elizabeth (Piekut). *[Note: I also see now how this supports the recommendation to increase from 30% to 50% the net residential acreage included in the preserved open space. In every case except the Suburban Zone, the theoretical developer was left with more net residential land area than needed to meet the 20,000sf minimum lot size.]*
- Traditionally minimum lot size is usually equal to minimum land area per dwelling unit so density is almost synonymous with minimum lot size but the maximum density concept flips that and provides more flexibility. However it’s meant for more for truly rural areas, which Kittery might not be (Di Matteo). Remember that we’re trying to be connected to the Mt. Agamenticus to the Sea initiative (Kalmar). And that’s what the impetus for this ordinance was—maintain what rural and unfragmented blocks there are. There are some big blocks with meaningful habitat (Bennett). Brunswick has overlays to protect unfragmented blocks and other resources (Young). We’ve lost at least three of the large habitat blocks we had in 2000; there are really only two, maybe three left (Bennett). After the last Comp Plan when we tried to go to 3-acre zoning, there was a lot of opposition. If we do something like that again, we’ll need to educate the public and need the help of KOSAC (Davis).
- We should meet more often (Grinnell). We’d like a Planning Board representative on KOSAC (Bennett).
- Cape Elizabeth is using GrowSmart maximum density concept. We do need a mechanism for comparing conventional subdivision to cluster—I have mixed feelings about requiring the applicant to put work into something that’s not permitted but there should be a way to compare—linked to an example of how Newburyport does that. Newburyport also allows greater density based on historic preservation, affordable housing, and public access. I provided a simple example from Effingham, NH where putting more land in open space earns a bonus of more lots. Consider a density bonus of some sort in Kittery (Piekut). We have something in the Mixed Use Zone (Davis). We can use these things based on different zones. And without making it too onerous for the applicant, we can get an idea of what the yield in a conventional subdivision would be (Kalmar). Some of the evils of that are driven by numbers, if we had a five- or seven- or ten-lot limit on subdivisions a lot of that would go away. Smaller developments will be more sensitive. There’s a lot of money in subdivision—take that incentive away. Same as limiting a building to 100,000sf on Route 1 (Wilson). Monster development doesn’t maximize value, eventually it depresses value. Have to preserve existing property values (Alesse). More viable subdivisions should be where we have sewer (Davis).
- Let’s discuss how to work with KOSAC at our next meeting (Grinnell).
- What are the next steps? Staff will work on this? (Young) We’ll put minutes together and start drafting specific amendments. Keep looking at the resources provided, generate more questions, we’ll meet again later, keep in touch (Di Matteo).
- Think about simple amendments first (Wilson).
- We could write basic language for homeowner’s documents (Davis).

Chris DiMatteo

From: Legal Services Department <Legal_Services_Department@memun.org>
Sent: Wednesday, March 16, 2016 11:03 AM
To: Chris DiMatteo
Subject: RE: Kittery - FW: referencing the comprehensive plan in ordinances

Chris,

I apologize for the delay in responding to your inquiry. I don't think there is necessarily a legal problem in generally referring to the principles and values contained in the town's comprehensive plan. After all, a zoning ordinance is meant to be consistent with, and pursuant to, a comprehensive plan. Thus, I am not troubled by the reference in the purpose section of the ordinance you attached.

If there is a legal issue, I think it would relate to the incorporation of material from another source by reference into the zoning ordinance provisions imposing specific performance standards and requirements. For example, if an ordinance incorporates another document, law or regulations as they exist and "as amended in the future," that amounts to an improper delegation of legislative authority because the underlying material that is referenced (and as a result the zoning ordinance criteria) could change without any approval by the local legislative body. See *Op. Me. Att'y Gen.* (March 15, 1978). I have not had time to perform extensive research on whether there is an issue when an ordinance incorporates a document created by the same legislative body. I'm not sure if that is even your intention in this case, but it is a fact that the comprehensive plan and the roadways it mentions may change over time. To avoid any problems, I would suggest that in the open space buffer criteria example you sent, that you either list the specific scenic roadways or that you indicate the specific version of the comprehensive plan that you are incorporating. For example: "scenic roadways as identified in the Kittery Comprehensive Plan adopted March 16, 2016." Even if you do not do so, a court may interpret your reference to the comprehensive plan as a reference to the version in effect when the zoning ordinance language was adopted, so it makes sense to state the specific version as a way of reminding yourself of the need to update that language when the plan changes. See generally, *State v. Webber*, 133 A. 738 (Me. 1926).

If you were seeking to incorporate the plan as amended into the future, let me know and I can do some additional research, although I think you would also need to consult the town's private attorney.

I know you did not ask me about the substance of the buffer provision itself, but I did want to mention generally that buffers and similar requirements need to be supported by a legitimate land use concern. A 100 foot or 50 foot wide planted buffer would need to be reasonable and have a rational relationship to applicable land use impacts and goals the town is seeking to attain. I don't know what the common practice is concerning buffer depth, so I offer no opinion. I only wanted to note that the town would need to be able to explain why a 100-foot buffer is necessary instead of a 25-foot or 10-foot buffer, etc. . if you have already considered this issue, disregard my comments.

I hope this is helpful. Please let me know if you need anything further.

Susanne F. Pilgrim, Esq., Director
Legal Services Department

Maine Municipal Association
60 Community Drive, Augusta, ME 04330
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1-800-452-8786 (in state)
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From: Chris DiMatteo [<mailto:CDiMatteo@kitteryme.org>]
Sent: Wednesday, March 09, 2016 8:07 AM
To: Christine Bragg <cbragg@memun.org>
Subject: referencing the comprehensive plan in ordinances

Good morning Christine!
I have another question....

Some Board and Council members raised the question regarding the appropriateness and legality of directly referencing the Comprehensive Plan in the town's land use code. Below are the two instances that are being proposed.

My thoughts are that since the state statute expects that at least subdivision in 30-A §4404 Review Criteria (that the town uses this for site plan and subdivision) requires conformity with the comprehensive plan that referencing it directly is not an issue and actually would help clarify considering conformity with the comp plan.

Very much interested in your insight on this.

Thanks
Chris

Current proposals:

16.8.11.1 Purpose.

To implement adopted Comprehensive Plan policies regarding the Town's natural, scenic, marine, cultural and historic resources, land use patterns and recreation and open space, this Article is intended to encourage and allow new concepts and innovative approaches to housing/commercial development and environmental design so development will be a permanent and long-term asset to the Town, while in harmony with the natural features of the land, water and surrounding development. Objectives include:

- A. efficient use of the land and water, with small networks of utilities and streets;
- B. preservation of contiguous, unfragmented open space and creation of recreation areas;
- C. maintenance of rural character, by means of preserving farmland, forests and rural view sheds ~~scapes~~, and limiting development in close proximity to existing public streets, especially along scenic roads as designated in the Comprehensive Plan;
- D. preservation of areas with the highest ecological value;
- E. location of buildings and structures on those portions of the site most appropriate for development;
- F. creation of a network of contiguous open spaces or 'greenways' by linking the common open spaces within the site and to open space on adjoining lands wherever possible;
- G. reduction of impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff;
- H. preservation of historic, archaeological, and cultural features; and
- I. minimization of residential development impact on the municipality, neighboring properties, and the natural environment.

16.8.11.6 Standards.

E. Open Space Requirements:

4. Buffering. Planting, landscaping, form and siting of building and other improvements, or fencing and screening must be used to integrate the proposed development with the landscape and the character of any surrounding development. A buffer not less than 100 feet in depth must be provided along the street frontage adjacent to scenic roadways, as identified in the Comprehensive Plan and 50 feet in depth for all other public streets. Where the portion of the development does not abut a street, the side and rear yard setbacks must include a buffer no less than 20 feet in depth. All or a portion of the existing vegetation may be used in lieu of new plantings for the buffer area as determined by the Planning Board.

Christopher Di Matteo

Town Planner

200 Rogers Road, Kittery Maine 03904

(207) 439-6807 Ext. 307 / (207) 475-1307 (Direct Line)

cdimatteo@kitteryme.org

You are receiving information from and/or communication with the Kittery Planning Office. Information exchanged may relate to an item before the Planning Board. The Kittery Planning Board is a quasi-judicial board; **THEREFORE YOU SHOULD NOT FORWARD THIS EMAIL TO THE PLANNING BOARD.**

April 28, 2016

Ms. Ann Grinnell, Chair
Kittery Planning Board
200 Rogers Road
Kittery, Maine 03904

Dear Ms. Grinnell:

Due to a prior commitment I cannot attend the public hearings scheduled for Thursday evening so I am writing to provide a few comments regarding the proposed amendments to Town Code 16.8.11 (Item 1) as presented in the April 28, 2016 "Review Notes" available on the Town website. In general, I feel the amendments address important areas of the LUDC needing clarification. It is apparent that the Planning Board and the Planning Department have spent many hours working on the amendments and it is reassuring that staff has been communicating with the Maine Municipal Association (MMA) on certain aspects.

While amended sections like 16.8.11.6.I.4 (lines 151-159) include clear and specific standards for buffering at streets, other amended sections are rather open ended, presenting a challenge for an applicant to understand and respond to the requirements that need to be met. The attached excerpt (pages 45 and 46) from the December 2011 MMA publication titled "Manual for Local Planning Boards: A Legal Perspective" provides municipalities guidance regarding ordinance language that could be considered vague. The Manual also cites various legal cases in Maine pertaining to the matter. In consideration of the MMA guidance, the Board may wish to evaluate whether the following sections of the proposed LUDC amendments provide sufficient notice of what requirements the applicant will have to meet:

- 16.8.11.5.A.5 (lines 69 to 74): There is no specific standard regarding the extent to which the Planning Board could change the total number of lots/units allowed.
- 16.8.11.6.E.7 (line 124): The phrase "...contiguous and unfragmented to the extend necessary..." could be interpreted very broadly unless more specifics are provided.
- 16.8.11.6.E.7.f (lines 129-130): There is no reference to published documents regarding land that is "identified as a conservation priority" by the listed groups. Could this amendment as written be considered an improper delegation of authority?
- 16.9.1.7.A (line 178 to 184): This amendment does not provide performance standards (or a limit) by which the buffer area can be increased by the Board.
- 16.9.1.7.B (line 186 to 188): This amendment does not provide standards for acceptable noise levels or the mitigating credit for buffering.

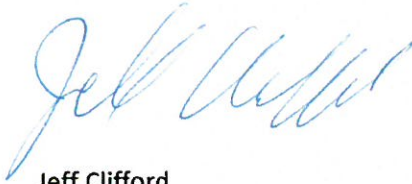
April 28, 2016

Page 2

The Board may also wish to consider modifications to 16.2.2 Definitions. This section allows for, and even encourages, reduction of the "size" of a road (lines 203 and 204). However, there are no provisions that allow for reduction of road dimensions under the listed "dimensional standards", (lines 207 to 209). Therefore, it appears that a waiver or variance would now need to be granted for a reduction of pavement width (a dimensional modification which has typically been granted by the Board for cluster development projects in Kittery).

Thank you for your consideration of these comments.

Sincerely,



Jeff Clifford

27 Miller Road

e-copy: Chris Di Matteo, Town Planner

Maine
Municipal
Association

Manual for Local Planning Boards: A Legal Perspective

December 2011 revised edition | MMA Legal Services

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maintained in the official files of the board. The record is a public record under the Maine Freedom of Access Act and can be inspected and copied by any member of the public, whether or not a resident of the municipality.

Effect of Decision; Transfer of Ownership After Approval

It is commonly assumed that a subsequent purchaser of land for which a conditional use or special exception or site plan review approval was granted previously does not need to return to the board for a new review and approval simply because of the change in ownership. However, at least one Maine Superior Court case has held otherwise. *Inland Golf Properties, Inc. v. Inhabitants of Town of Wells*, AP-98-040 (Me. Super. Ct., York Cty., May 11, 2000), citing a discussion in Young, *Anderson's American Law of Zoning* (4th ed.), § 20.02. Until the Maine Supreme Court rules on this issue, where an original approval was based on the financial or technical capacity of the original applicant, the board probably should require the new owner to offer similar proof to the board before proceeding to complete the project under the original approval. It is advisable to include language in the applicable ordinance which expressly addresses this issue to avoid any confusion.

Second Request for Approval of Same Project

Once an application for a land use activity has been denied, the board is not legally required to entertain subsequent applications for the same project, unless the board finds that “a substantial change of conditions ha(s) occurred or other considerations materially affecting the merits of the subject matter had intervened between the first application and the (second).” *Silby v. Allen's Blueberry Freezer, Inc.*, 501 A.2d 1290, 1295 (Me. 1985). However, an ordinance may provide a different rule regarding subsequent requests which would govern the board's authority.

Vague Ordinance Standards; Improper Delegation of Legislative Authority

It is very important for an ordinance, especially a zoning ordinance, to include fairly specific standards of review if it requires the issuance of a permit or the approval of a plan. The standards must be something more than “as the Board deems to be in the best interests of the public” or “as the Board deems necessary to protect the public health, safety and welfare.” *Cope v. Inhabitants of Town of Brunswick*, 464 A.2d 223 (Me. 1983). It also is very important to have language in the ordinance instructing the board as to the action which the board must take. It is not enough merely to say that the board must “consider” or “evaluate” certain information. *Chandler v. Town of Pittsfield*, 496 A.2d 1058 (Me. 1985).

If an ordinance gives the board unlimited discretion in approving or denying an application, it creates two constitutional problems. It violates the applicant's constitutional rights of equal protection and due process because (1) it does not give the applicant sufficient notice

of what requirements he or she will have to meet and (2) it does not guarantee that every applicant will be subject to the same requirements. It amounts to substituting the board's determination of what are desirable land use regulations for that of the legislative body (town meeting or town or city council), where it legally belongs. The courts call this an "improper delegation of legislative authority." Legally, only the legislative body can adopt ordinances, unless a statute or charter gives that authority to some other local official or board.

It is not legally permissible to include a review standard in the ordinance which requires a board to find that a project will be "compatible with the neighborhood" or "harmonious with the surrounding environment." Compare *Wakelin v. Town of Yarmouth*, 523 A.2d 575 (Me. 1987), *American Legion, Field Post #148 v. Town of Windham*, 502 A.2d 484 (Me. 1985), *In Re: Spring Valley Development*, 300 A.2d 736 (Me. 1973), and *Secure Environments, Inc. v. Town of Norridgewock*, 544 A.2d 319 (Me. 1988). A standard that requires a board or official to determine whether a development "will conserve natural beauty" has also been declared unconstitutional. *Kosalka v. Town of Georgetown*, 2000 ME 106, 752 A.2d 183. Compare, *Conservation Law Foundation, Inc. v. Town of Lincolnville*, 2001 ME 175, 786 A.2d 616. The court has upheld an ordinance review standard that requires a determination that "the proposed use will not adversely affect the value of adjacent properties." *Gorham v. Town of Cape Elizabeth*, 625 A.2d 898 (Me. 1992). A shoreland zoning ordinance provision requiring a board to find that a proposed pier, dock or wharf would be "no larger than necessary to carry on the activity" has also been upheld, *Stewart v. Town of Sedgwick*, 2002 ME 81, 797 A.2d 27, as has ordinance language requiring a finding that a pier, dock or wharf would not "interfere with developed areas." *Britton v. Town of York*, 673 A.2d 1322 (Me. 1996).

If a court finds that an ordinance does not satisfy the tests outlined in the cases just cited, it generally will hold that a denial of an application by the board under the deficient portions of the ordinance is invalid. The result is that the applicant will be able to do what he or she applied to do in the first place, absent some other law or ordinance which controls the application and provides a separate basis for review and possible denial. *Bragdon v. Town of Vassalboro*, 2001 ME 137, 780 A.2d 299. Therefore, it is important to have local ordinances reviewed by an attorney or some other professional familiar with court decisions and State law to determine whether those local ordinances are enforceable.

Sorting Out Which Board or Official Has Jurisdiction Over Which Part of a Project and at What Point in the Process

The board should look carefully at the administrative procedures and appeals procedures found in the ordinance and statute (if any) governing its review. Often, the steps which an applicant must follow to obtain the necessary planning board approval, building permit from

RECODIFICATION - ORDINAMENT - 07/26/2010
(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14; 1/28/15; 9/28/15;10/14/15;10/26/15)

Table 1 - Chapter 16.8, Article IV DESIGN AND CONSTRUCTION STANDARDS FOR STREETS AND PEDESTRIAN WAYS									
Page ONE		PUBLIC STREETS				PRIVATE STREETS			
Design and Construction Standards	Arterial Highways	Secondary Highways	Commercial Light Industrial Mixed Use Developments	Primary Collectors	Secondary Collectors	Minor Streets	Class III	Class II	Class I
Average Daily Trips (ADT)	9,001 or more	3,001 to 9,000	ADT and Peak	801 to 3,000	201 to 800	35 to 200	72 to 800	35 to 71	12 to 35
Street Width Design:	<p>Streets in this classification will generally be affected by development rather than constructed, and may require drainage, soil, use, traffic safety, and impact studies beyond the scope of this title for required improvements and/or construction.</p> <p>Commercial, light industrial and mixed use development(s) streets shall be constructed to no less than secondary collector standards and may be subject to higher standards depending upon the traffic generation and use(s) intended.</p>						Same standards as public streets	40'	40'
a. Right-of-way							22'	20'	18' gravel
b. Travel Pavement							6'	5'	5'
c. Sidewalk/Pedestrian way							2' walk side 8' opp. Side	2' walk side 8' opp. Side	N/A
d. Paved Shoulder							2' opp. Side	2' opp. Side	N/A
e. Gravel Shoulder							sidewalk side	Not required	N/A
f. Enclosed Drainage							one side	emergency	No
g. Parking							one side	emergency	No
Street Gradients:									
a. Longitudinal (Min. to Max)							.05% to 6%	.05% to 7%	.05% to 8%
b. Slide Slope (horiz. to vert.)							3 to 1	3 to 1	2 to 1
c. Road Crown							1/4" per ft	1/4" per ft	1/2" to 1/2" per ft
Cul-de-sac:									
a. Street Length to Radius							N/A	1,500'	400'
b. Boundary Radius							N/A	65'	50' or 40' X 40' turn tee
c. Paved Radius							N/A	50'	gravel 40' or 18' X 18'
d. Second Access							Yes	Yes - can be emergency - easy	Not Allowed

16.3.2.15 Mixed Use - Kittery Foreside MU-KF.**A. Purpose.**

To provide business, service, and community functions within the Mixed Use - Kittery Foreside zone and to provide a mix of housing opportunities in the historic urbanized center of the community and to allow for use patterns which recognize the densely built-up character of the zone and the limitations for providing off-street parking. Design ~~review is~~ standards are used to facilitate the revitalization of downtown Kittery Foreside as a neighborhood center, while promoting economic development of service businesses and walk-in shopping as well as respecting the zone's historic and residential character.

[NOTE: The existing section 16.3.2.15.B and 16.3.2.15.C are not being amended]

D. Standards.

1. The design and performance standards of Chapters 16.8 and 16.9 must be met except where specifically altered in this subsection.

2. Dimensional Standards. The following space standards apply:

Minimum land area per dwelling unit	5,000 square feet
Minimum lot size	5,000 square feet
Minimum street frontage	0 feet
Minimum front yard along:	
Government Street east of Jones Avenue including	
Lot 107 at the corner of Government and Walker Streets	0 feet
other streets	10 feet
Wallingford Square	0 feet
(Ordained 9/24/12; effective 10/25/12)	
Minimum rear and side yards	10 feet
Minimum separation distance between principal	
buildings on the same lot	10 feet
Maximum building height	40 feet*
*Except that for buildings located on lots that abut tidal	
waters, the highest point on the primary structure of the	
building including the roof, but excluding chimneys, towers,	
cupolas, and similar appurtenances that have no floor area,	
may be not more than thirty-five (35) feet above the	
average grade between the highest and lowest elevations	
of the original ground level adjacent to the building.	
Minimum setback from:	
water body and wetland water dependent uses	0 feet

all other uses (including buildings and parking) 75 feet
unless modified,
according to the terms of
subsection (E) of this
Section.

Maximum building coverage 60 percent
Minimum open space on the site 40 percent

Minimum land area per unit for eldercare facilities
that are connected to the public sewerage system:
dwelling unit with two or more bedrooms 3,000 square feet
dwelling unit with less than two bedrooms 2,500 square feet
residential care unit 2,000 square feet

Minimum land area per bed for nursing care and
convalescent care facilities that are connected to
the public sewerage system 1,500 square feet

3. Maximum Building Footprint.

The maximum area of the building footprint of any new building is one thousand five hundred (1,500) square feet unless the building is replacing a larger building that existed on the lot as of April 1, 2005.

A. If the footprint of the pre-existing building was larger than one thousand five hundred (1,500) square feet, ~~the maximum size of the footprint of the pre-existing building was larger than one thousand five hundred (1,500) square feet,~~ the maximum size of the footprint of the new building may be no larger than the footprint of the pre-existing building.

B. If the footprint of the new building is larger than one thousand five hundred (1,500) square feet, the width of the new building as measured parallel to the front lot line may not be greater than the width of the pre-existing building.

4. Design Standards.

Any new building, or additions or modifications to an existing building that:

(1) cumulatively increases the building footprint or building volume by more than thirty percent (30%) after April 1, 2005, or

(2) is subject to shoreland overlay zoning as set forth in Section 16.7.3.5.1 must conform to the following standards.

NOTE: This requirement does not apply to the replacement of a building destroyed by accidental or natural causes after April 1, 2005 that is rebuilt within the pre-existing building footprint and that does not increase the pre-existing building volume by more than thirty percent (30%).

a. Placement and Orientation of Buildings Within a Lot.

i. The placement of buildings on the lot must acknowledge the uniqueness of the site, the neighboring buildings, and the natural setting. Existing views and vistas must be preserved in the design of the site and buildings, and buildings must be placed to frame, rather than block, vistas.

ii. Buildings and the front elevation must be oriented facing the street on which the building is located. The siting of buildings on corner lots must consider the placement of buildings on both streets.

b. Overall Massing of Buildings.

The overall massing objective is to simulate a concentrated use of space in the Foreside zone while avoiding the use of large, multi-unit buildings. In the interest of this objective, building footprints must ~~meet~~ not exceed the maximums set forth ~~above~~ within this subsection. Larger parcels may be developed but will require the use of multiple buildings with smaller footprints. The smaller scale of the buildings will allow new projects to fit in with the existing architectural styles of the Foreside zone.

c. Grouping of Smaller Buildings.

When smaller buildings that are part of one project are placed adjacent to one another on the same lot or adjacent lots, each building must have its own structure and elevation treatment that is different from its neighbor. Small decorative wings may be attached to larger structures if well integrated into the overall arrangement of shapes.

d. Building Details.

Buildings must include architectural details that reflect the historic style of the Foreside zone. Molding and trim must be used to decorate or finish the surface of buildings and doors. Eaves and overhangs should be incorporated into the design.

e. Roof Slopes and Shapes.

i. Allowable roof shapes include a simple gable, gambrel, saltbox, and hip. The minimum roof pitch must be 8:12 (rise over run) except in the case of a hip roof where a lesser pitch is acceptable.

ii. The roof pitch of elements that link buildings or portions of buildings must be the same or greater than the pitch of the roofs on the buildings that are being linked.

iii. Flat or nearly flat shed roofs are not allowed except for porches, dormers, or attachments distinct from the primary structure or where systems are concealed by standard roof forms.

iv. The roof pitch of additions or wings must be similar to the pitch of the primary roof. Clusters of buildings must apply the same roof plan principles to pitch and link roofs.

f. Fencing and Walls.

i. Fencing may be used to separate public and private spaces, mark property lines, and protect plantings.

ii. Fences must harmonize with nearby structures and not unduly interfere with existing scenic views or vistas.

iii. Picket and other medium height fences and low stone walls are permitted.

iv. Modern concrete walls and similar structures are prohibited.

v. Chain-link and stockade fences are not appropriate in front yards and may be used in side and rear yards only if compatible with the overall design of the site.

vi. Waste receptacles, dumpsters, exterior systems, service entrances and similar areas must be screened with board fences, board and lattice fences, and/or landscaping.

g. Utilities.

All utilities serving a new building including electricity, telephone, cable, Internet, and alarm systems must be placed underground from the access pole.

h. Preservation of Trees.

Existing large, healthy trees must be preserved if practical.

5. Signage

Display of signboard and/or products for sale may be placed on a Town sidewalk only if:

a. Products for sale displayed outside the building are limited to an area extending no greater than two feet from the front facade of the building;

~~b. Signboards are permitted in accordance with a design detailing style and size submitted by Kittery Foreside Committee and approved by the Planning Board and on file in the planning office;~~

~~e.b.~~ Signboards and/or products for sale must be removed from the sidewalk at the close of each business day;

~~d.c.~~ An annual permit must be obtained from the Code Enforcement Officer. Permits are issued for a calendar year or portion thereof, to expire December 31st of each year. Sign permit application fee, reference Appendix A.

[NOTE: The existing section 16.3.2.15.E is not being amended]

~~F. Design Review.~~

~~KFC advisory design review is required for any project involving the construction of a new building, or the enlargement or modification of an existing building that:~~

175 ~~(1) cumulatively increases the building footprint or building volume by more than thirty percent (30%) after~~
176 ~~April 1, 2005, or~~

177
178 ~~(2) is subject to the shoreland overlay zone requirements as set forth in Section 16.43.2.17, is subject to~~
179 ~~an advisory design review by the Kittery Foreside Committee (KFC).~~

180
181 **NOTE:** This requirement does not apply to the replacement of a building destroyed by accidental or natural
182 causes after April 1, 2005 that is rebuilt within the pre-existing building footprint and that does not increase
183 the pre-existing building volume by more than thirty percent (30%). This review is limited to consideration
184 of the project's conformance with the design standards set forth in subsection (E)(4) of this Section. Upon
185 receipt of an application for a project in the district that is subject to this requirement, Town staff shall
186 forward the application to the chair of the KFC. The application must contain adequate information to allow
187 the committee to evaluate the project's conformance with the design standards of subsection (E)(4) of this
188 Section.

189
190 The KFC has a maximum of forty-five (45) days to complete its review of the project. The KFC is to provide
191 a written report documenting its findings relative to conformance with the design standards and any
192 recommendations for changes to the project needed to conform to the standards. The design review must
193 be completed prior to approval of a development plan under Chapter 16.10, or the issuance of a building
194 permit if development review is not required, unless the KFC fails to complete its review within forty-five
195 (45) days in which case the application must be processed without the KFC review. The findings of the
196 design review must be provided to the Planning Board and/or CEO for consideration in their actions relative
197 to the project.



TOWN OF KITTERY
 200 Rogers Road, Kittery, ME 03904
 Telephone: 207-475-1329 Fax: 207-439-6806

REPORT TO TOWN COUNCIL

Meeting Date: Click here to enter text.
 From: Click here to enter text.
 Subject: Click here to enter text.
 Councilor Sponsor: Click here to enter text.

EXECUTIVE SUMMARY

In many towns throughout Maine there is an increase in people interested in growing their own food because of cost and quality. We are seeing more people in Kittery raising chickens. Unfortunately without specific regulations, some issues have arisen that now warrant us to take a look at existing zoning concerning animal control.

STATEMENT OF NEED

To enable the citizenry to own and maintain animals to provide food, while protecting and maintaining order, health and the general welfare of the town. To apply controls for this ownership by enhancing Title 6 Animals and Title 16 Land use.

BACKGROUND

For the past few years people have been keeping chickens in Kittery. In many cases it is not evident chickens are being kept. In some situations, however, chickens run loose in neighborhoods defecating on a neighbor's property and running at large. In conversations with the animal control officer he states that no ordinance in town that regulates this. This past year code enforcement has had to respond to complaints of pigs and chickens in town.

FACTS BEARING ON THE EQUATION

Kittery Town Code Title 6 Animals. This title does not control animals other than dogs.
 Title 16 does not address domestic animals or the keeping of animals for food in a residential setting.

CURRENT SITUATION

In Admiralty Village there are chickens kept in at least two locations. Varying complaints from neighbors include chickens at large, chickens defecating on walkways and porches, people walking their dogs and the dogs being distracted by loose chickens. The animal control officer has informed CEO as he has no authority in the matter and does not plan to address as part of his duties and responsibilities. Questions concerning the keeping of chickens is a weekly event. There is nothing in the code that addresses the number of animals or the gender of animals. Potentially, the only control

over roosters would be the noise ordinance. There is nothing in the code that addresses the shelter for any of these animals. In one case chickens are housed in a structure built of used lumber and wooden pallets. Nothing in the code addresses the handling of manure.

PROPOSED SOLUTION/RECOMMENDATION

The first part of a solution would be to address Title 6, Animals. This is a good dog ordinance but it lacks language to address pigs, goats, horses, chickens etc. Attached to this document is a copy of Kittery Title 6 and the Town of York's Animal Control Ordinance. I believe that the York Animal Control Ordinance is a good model to emulate going forward.

The second part of a solution would be to address title 16, Land Use Code. What areas of town will the keeping of such typed of animals be allowed. How many animals and possibly what gender should be considered. What types of structures should be allowed for the keeping of these animals. Attached are chicken ordinances from the towns of the South Portland, Brunswick and Biddeford along with Maine Revised Statutes Title 7 Agriculture and Animals chapter 725 / 3948 Municipal Duties plus one article on urban agriculture.

RATIONALE FOR THE PROPOSED SOLUTION (INCLUDING COSTS)

List of attachments:

- 1. Kittery Title 6 Animals**
- 2. Town of York, Me Animal control**
- 3. So. Portland**
- 4. Brunswick**
- 5. Biddeford**

**TOWN OF KITTERY, ME
PLANNING BOARD MEETING
Council Chambers**

**UNAPPROVED
APRIL 28, 2016**

Ms. Kalmar made a motion to grant a 90-day time extension of the Sketch Plan Review approval to allow for filing of a Preliminary Subdivision Application.

Mr. Dunkelberger seconded.

Motion passed 6-0-0.

B. Animal control measures in Title 16

Ms. Grinnell cited the background and current situation statements included in the attached draft report to Town Council.

Mr. Di Matteo suggested a few options for the Board to consider. One fundamental question is whether this type of ordinance would need to be in Land Use. To date, this issue is captured in standalone ordinances for other Towns. If it is equivalent to domestic animals or canines then it would be captured outside the Land Use code.

Ms. Kalmar noted that commercial chickens are special exception uses in rural-residential zones of other Towns. She would prefer to see chickens listed under Title 6.

Mr. Dunkelberger suggested to consider how the Town of Eliot handled the issue since their results were simple and effective.

Ms. Driscoll-Davis hoped that chickens not be banned entirely. Mr. Dunkelberger noted that there are ways to guide specific setbacks for chicken enclosures. Ms. Grinnell supported how other ordinances limited the number of chickens and roosters allowed. Mr. Di Matteo confirmed that if written into Title 16, it is not in the Planning Board's purview. After further discussion, the Board agreed that the Town Council should help to develop this ordinance.

Ms. Wells suggested that horse waste be considered, specifically in Roger's Park. The elementary schools and Kittery Community Center conduct outdoor classrooms in the park and have observed some horse waste along the trails.

Mr. Alesse learned after speaking with Animal Control that there is no ordinance in place governing dog waste removal on Seapoint and Crescent beach. He asked that staff consider a revision to Title 6.1 that would allow Code Enforcement the authority to fine for not bagging and disposing of canine waste. Mr. Di Matteo cited Title 6.1.14 Penalties and Title 6.1.5 Record to be Kept by Animal Control Officer –Contents. Mr. Dunkelberger noted Title 6.1.13 addresses the concern Mr. Alesse raised and Title 6.1.14 refers the penalties for any violation. Mr. Di Matteo will research further as to why Title 6.1.0 exists, which excepts Seapoint and Crescent Beaches from the article.

Mr. Alesse moved to adjourn.

Ms. Driscoll-Davis seconded.

Motion carried 6-0-0.

The Kittery Planning Board meeting of April 28, 2016 adjourned at 6:51 p.m.

Submitted by Marissa Day, Minutes Recorder, on May 5, 2016.

Disclaimer: The following minutes constitute the author's understanding of the meeting. Whilst every effort has been made to ensure the accuracy of the information the minutes are not intended as a verbatim

Maine Revised Statutes

Title 7: AGRICULTURE AND ANIMALS

Part 9: ANIMAL WELFARE

Chapter 725: MUNICIPAL DUTIES

§3948. Animal control

1. Control. Municipalities shall control dogs running at large.

[1997, c. 690, §29 (AMD) .]

2. Medical attention. Law enforcement officers and animal control officers shall take a stray animal to its owner, if known, or, if the owner is unknown, shall ensure that any injured companion animal that is at large or in a public way is given proper medical attention.

[2009, c. 343, §21 (AMD) .]

3. Domesticated and undomesticated animals. A municipality shall control domesticated animals that are a cause of complaint in the community. A municipality shall control animals that pose a threat to public health or safety. A municipality may control undomesticated animals in matters on which no other department is charged by law to regulate.

[1997, c. 690, §31 (AMD) .]

SECTION HISTORY

1987, c. 383, §3 (NEW). 1987, c. 643, §4 (AMD). 1993, c. 468, §16 (AMD). 1995, c. 490, §17 (AMD). 1997, c. 690, §§29-31 (AMD). 2009, c. 343, §21 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.

If you need legal advice, please consult a qualified attorney.

Office of the Revisor of Statutes (mailto:webmaster_ros@legislature.maine.gov) • 7 State House Station •
State House Room 108 • Augusta, Maine 04333-0007

Page composed on 01/05/2016 12:44:07.

Title 6 ANIMALS

Chapter 6.1 DOGS

Kitty

6.1.0 Exceptions. Seapoint / Crescent Beaches; Fort Foster.

If in conflict with any section of this chapter, the provisions of Chapter 12.4 (Seapoint/Crescent Beaches) or Chapter 12.5 (Fort Foster) will apply.

6.1.1 Definitions.

For the purpose of this chapter, the following terms have the meaning ascribed to them in this section.

Animal control officer includes municipal police officer.

At large means off the premises of the owner unless:

- A. Controlled by a leash, cord or chain, of not more than eight feet in length;
- B. Within a vehicle, or under restraint in an open vehicle being driven or parked on a public way; or,
- C. Under the control of a person whose personal presence and attention would control the conduct of the dog.

Owner means any person keeping or harboring a dog.

6.1.2 Applicability to Visiting Nonresidents.

The licensing provisions of this chapter do not apply to any dog belonging to a nonresident visiting within the town without the intention of becoming a resident, but the owner of such dog must comply with the remaining provisions of this chapter.

6.1.3 Right of Entry to Inspect License, Dog.

For the purpose of discharging the duties imposed by this chapter and to enforce the provisions of this chapter, any animal control officer is empowered with the consent of the owner or occupant thereof, to enter upon any premises on which a dog is kept or harbored and demand the exhibition by the owner of the dog and the license of such dog.

6.1.4 Hindering Officers, Improperly Releasing Dogs Prohibited.

No person may interfere with, hinder or molest any animal control officer in the performance of the officer's duty, or seek to release any dog in the custody of an animal control authority, except as provided in this chapter.

6.1.5 Record to be Kept by Animal Control Officer—Contents.

It is the duty of an animal control officer to keep, or cause to be kept, an accurate and detailed record of the licensing, impoundment and disposition of all dogs coming into the officer's custody.

6.1.6 License Required.

No dog may be kept within the limits of the town unless such dog has been licensed by its owner in accordance with the statutes of the state.

6.1.7 Impoundment Authorized.

Unlicensed dogs, wherever found, or dogs found running at large will be taken by an animal control officer and impounded in an animal shelter. Such animal may be confined for a period of not fewer than ten (10) days unless earlier reclaimed under the provisions of Section 6.1.9.

6.1.8 Impoundment Fees.

Any dog impounded in accordance with this chapter may be reclaimed upon payment of the total fees for board. This fee is paid to the keeper of the animal.

6.1.9 Disposition of Impounded Dog, Notification of Impoundment.

A. A dog owner may reclaim an impounded dog upon compliance with Section 6.1.6, and upon payment of the boarding fees set forth in Section 6.1.8. Any dog impounded under the provisions of this chapter and not claimed by the owner within the ten (10) day period, is considered abandoned by the owner and the property of the animal shelter. The dog may be given, after consultation with the Humane Society and/or the Animal Refuge League, to the Humane Society or the Animal Refuge League or any person deemed to be responsible and a suitable owner who will agree to comply with the provisions of this chapter or humanely destroy the animal.

B. Where the ownership of an impounded dog is known, or can be reasonably ascertained by an animal control officer, such officer shall, if possible, notify the owner within three days of such impoundment, but failure to give such notice does not impose any liability upon the town for the destruction or transfer to another of any dog so impounded and not reclaimed within the required period.

6.1.10 Disposition of Dog Biting Person.

Whenever any dog bites a person the owner of such dog must immediately notify an animal control officer who may order the dog held on the owner's premises or have it impounded for a period of two weeks. The dog must be examined immediately after it has bitten any person and again at the end of the two-week period. If at the end of the two weeks a veterinarian is convinced that the dog is then free from rabies the dog is released from quarantine or from the pound as the case may be. If the dog dies within the period, its head must be sent to the state department of health for rabies examination.

6.1.11 Disturbing the Peace.

No person owning any dog may suffer or permit such dog to disturb the peace and quiet of the neighborhood by continuous barking, by making other loud or unusual noises or by running through or across cultivated gardens or fields.

6.1.12 Running at Large Prohibited.

No dog is permitted to run at large within the limits of the town, however, this section does not prohibit the owner of a dog from using such dog for hunting provided the dog is under the control of its owner.

6.1.13 Animal Waste.

It is a violation of this ordinance for any owner of a dog to fail to remove and properly dispose of feces left by his or her dog(s) on any improved portion of public ways or sidewalks.

6.1.14 Penalties.

A person who violates any provision of this chapter is subject to penalties set forth in Title 1.

Animal Control Ordinance



Town of York, Maine

Most Recently Amended: May 16, 2015

Prior Dates of Amendment: May 17, 2014
May 19, 2012
November 2, 2010
May 20, 2006

Date of Original Enactment: November 2, 1993

ENACTMENT BY THE LEGISLATIVE BODY

Date of the vote to amend this Ordinance: May 16, 2015.

Certified by the Town Clerk: Mary Anne Symons on June 19, 2015
(signature) (date)

ANIMAL CONTROL ORDINANCE

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Sunrise

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ANIMAL CONTROL ORDINANCE

Section 1 – Purpose

The purpose of this ordinance is to require all animals in the Town of York be kept under the control of their owner or keeper at all times so that they will not injure persons or other animals, damage property or create a public health threat.

The provisions of this ordinance that apply to the owner of an animal apply equally to any person keeping, or having control, custody, or possession of that animal.

Section 2 – Definitions

1. **ABANDONED ANIMAL:** an animal that has been deserted by its owner or keeper.
2. **ABUSED:** to treat an animal wrongfully or harmfully that results in injurious or improper treatment.
3. **ANIMAL:** every living, sentient creature not a human being.
4. **ANIMAL CONTROL:** control of dogs, cats and domesticated or undomesticated animals.
5. **ANIMAL CONTROL OFFICER:** any person appointed by the Town of York to enforce animal control laws.
6. **ANIMAL SHELTER:** a facility that includes a physical structure, or part of a physical structure, that provides temporary or permanent shelter to stray, abandoned, abused, or owner-surrendered animals.
7. **AT LARGE:** off the premises of the owner and not under the control of any person whose personal presence and attention would reasonably control the conduct of the dog.
8. **BEACH:** any beach area within the Town of York which is used by the general public.
9. **CONTROL:** the power or ability to direct the proper and safe activity of an animal.

10. **DOG:** any of large and varied groups of domesticated animals in the canine family.
11. **DOMESTIC ANIMAL:** animals that normally and customarily share human habitat and are normally dependant on humans for shelter and/or food, such as, but not limited to, dogs, cats, cattle, horses, swine, fowl, sheep and goats.
12. **LEASH:** a hand held device (lead, chain, or cord) which can be used to restrain a dog if the dog fails to respond to voice commands. In cases where a leash is required by law, ordinance or by order of a law enforcement officer, the owner or responsible party will be required to use a leash of 15 foot or less.
13. **OWNER:** any person or persons, firm, association or corporation owning, keeping or harboring an animal or any person having custody, possession, or control of an animal.
14. **RESPONSIBLE PARTY:** as used in this ordinance, the term "responsible party" means any person who has possession or custody of a dog. If a dog is present on a beach in violation of the restrictions of this section, the owner of the dog and the responsible party are jointly and severally liable for the violation.
15. **STRAY:** off the owner's premises and not under the control of a person.
16. **SUNRISE:** the event or time of the daily first appearance of the sun above the eastern horizon. Time for sunrise can be found in local daily newspapers or at the U.S. Naval Observatory Astronomical Applications Department WEB site at http://aa.usno.navy.mil/data/docs/RS_OneDay.html
17. **VOICE CONTROL:** as used in this ordinance, the term "voice control" means that the dog returns immediately to and remains by the side of the responsible party in response to the responsible party's verbal command.

If a dog approaches or remains within 10 feet of any person other than the responsible party, that dog is not under voice control and a violation of this Ordinance occurs unless such person has communicated to the responsible party by spoken word or gesture that such person consents to the presence of the dog. In the case that such person approached by a dog is a minor child, an adult must be present with the child to consent to the presence of the dog.

Section 3 – Animal Control Officer

A qualified person(s) shall be employed by the police department who shall be known as and perform the duties of Animal Control Officer(s). The Animal Control Officer shall be principally responsible for the enforcement of all laws related to dogs, cats, and other domesticated animals. The ACO will also handle undomesticated (wild) animal complaints and either handle locally or refer to the appropriate outside agency for assistance.

Section 4 – Control of Dogs

When off the premises of the owner, a dog shall be on a leash and under control of a person responsible for the dog's behavior, except as follows:

1. dogs at use during hunting;
2. dogs used for law enforcement;
3. service dogs;
4. dogs on private property with that property owner's permission to be unleashed while within voice control; or
5. dogs at public beaches in accordance with Section 10.

The owner of any dog found in violation of the above provisions shall be subject to the civil penalties provided in this ordinance.

Section 5 – Impoundment or Return of At Large Dogs

All dogs found at large in violation to Title 7, M.R.S.A., Section 3911 may be impounded at an animal shelter or returned to the owner, at the discretion of the Animal Control Officer. If the Animal Control Officer returns the dog to its owner, the owner shall pay a \$25.00 (twenty-five dollars) return fee to the Town of York before the dog is returned. This payment must be made to the Animal Control Officer, who shall issue a receipt therefore. All fees will be deposited in the Town of York's Municipal Animal Welfare Account required by Title 7, M.R.S.A. 3945.

Section 6 – Disposition of Impounded Animal

An owner is entitled to resume possession of any impounded animal provided that all provisions of this ordinance have been met, and that all impoundment fees due under the provisions of this ordinance have been paid. Any animal not claimed after the owner has been notified may be classified as an abandoned animal, and the animal's owner may be subjected to all civil penalties authorized by this ordinance. If said animal is not claimed by its owner or

keeper at the expiration of the ten days from the date of impoundment, then the person in charge of said animal shelter may give away, sell or otherwise humanely dispose of said animal.

Section 7 – Impoundment Fee

An owner may reclaim an impounded animal by first paying to the Town of York, a fee of \$50.00 (fifty dollars) for the 1st offense and \$100.00 (one hundred dollars) for subsequent offenses for each animal impounded. This fee shall be paid at the York Police Department. Fees must be paid and a receipt from the Police Department must be presented to the animal shelter before the release of an animal. All fees will be deposited in the Town of York Municipal Animal Welfare Account required by Title 7, M.R.S.A. 3945.

Section 8 – Animal Noise

Owning, possessing, or harboring any domestic animal that frequently or for continued duration, makes loud and unreasonable sounds such that it creates a disturbance on other properties shall be prohibited. For purposes of this ordinance, a dog that barks, bays, cries, howls, or makes any other noise continuously and/or incessantly for a period of 10 (ten) minutes or barks intermittently for ½ (one-half) hour or more to the disturbance of any person at any time of day or night, regardless of whether the dog is physically situated in or upon private property. However, this shall not include a dog if, at the time the dog is barking or making any other noise, a person is trespassing or threatening to trespass upon private property in or upon which the dog is situated, or for any other legitimate cause which teased or provoked the dog.

Section 9 – Control of Animal Waste

An owner must remove and dispose of any feces left by his/her animal on any sidewalk, street, beach, public property, or private property (other than the property of the owner of the animal or of a person who has consented to the presence of the animal on his or her property) and deposit such feces into appropriate litter receptacle. An owner whose animal is present on any property from which the animal's feces is required to be removed pursuant to this section must have in his or her possession a plastic bag or similar container, not part of the human body, for collecting and removing the feces. This regulation shall not apply to any person who, by reason of physical handicap, is unable to comply with the requirement.

Section 10 – Public Beaches – Restrictions

The following restrictions apply to domestic animals on the following beaches: Cape Neddick Beach, Short Sands Beach, Long Sands Beach, and Harbor Beach:

1. No dogs shall be present on these beaches year round unless the dog is accompanied by an owner or responsible party who has voice control (see definition) over the dog and who is carrying a leash in hand, which can be used to restrain the dog. A responsible party with multiple dogs must have adequate leashes for the number of dogs under his or her control.
 - An owner or responsible party shall be required to leash their dog(s) during this period if directed by a law enforcement officer due to violations of the voice control or dog waste provisions of this ordinance.
2. No domestic animals shall be present on these beaches between the hours of 8:00 am. and 6:00 pm. from May 20th through September 20th.
3. Dogs on these beaches will be required to be on a leash between May 20th and September 20th between the hours of 6 p.m. and sunrise (see definition)
4. Between May 20th and September 20th dogs will be allowed to be unleashed between sunrise and 8 a.m. as long as the dog is under the voice control (see definition) of its owner or responsible party. The requirements of paragraph #1 regarding leashes is in effect during this period. (The purpose of this exception is to allow individuals to walk, jog, run, or engage in other physical exercise with their dogs in the early hours of the morning).
5. Horses and ponies are prohibited from being on these beaches from May 20th to September 20th, except by written permission of the Board of Selectmen.
6. When otherwise allowed to be present on these beaches pursuant to this section, all other domestic animals must be under the control of their owner or responsible party at all times.

Section 11 – Other Prohibitions and Restrictions

1. It will be a violation of this ordinance to maintain or harbor any domestic animal on the property known as the Cliff Path, pursuant to a written agreement between the Town of York and the property owners dated November 08, 2002. The Cliff Path includes

publicly owned sections beginning at York Harbor Beach Parking Area, proceeding in a northeasterly direction along the shores of York Harbor and the Atlantic Ocean.

2. It will be a violation of this ordinance to allow domestic animals on the property known as the Fishermen's Walk that are not on a leash, pursuant to a written agreement between the Town of York and the property owners dated November 11, 1997. The Fishermen's Walk includes publicly owned sections beginning at the Wiggley Bridge and proceeding in a northeasterly direction along the York River to Stage Neck Road.

Section 12 - Dangerous Dogs

Any person who is assaulted by a dog or any person witnessing an assault against a person or domestic animal by a dog or a person with knowledge of an assault against a minor by a dog, may make a written complaint to the Animal Control Officer that the dog is a dangerous dog within thirty days of the assault,. The Animal Control Officer may issue a civil violation citation for keeping a dangerous dog pursuant to 7 M.R.S.A. subsection 3952. After issuing the citation and before a court hearing, if the dog poses an immediate or continuing threat to the public, the Animal Control Officer shall order the owner of the dog to muzzle, restrain or confine the dog to the owner's premises or to have the dog at the owner's expense at a place determined by the Animal Control Officer. If the owner fails to comply with such order, the Animal Control Officer may apply to the District Court, Superior Court, or a Justice of the Peace pursuant to 7 M.R.S.A. subsection 3952 for an ex parte order for authorization to take possession of the dog that poses an immediate or continuing threat to the public.

Section 13 - Trespass

An owner of an animal may not allow that animal to enter onto the property of another after the owner has been warned by the Animal Control Officer or a law enforcement officer that the animal was found on the property of another.

The owner of an animal is responsible, at the owner's expense, for removing such animal found trespassing. The Animal Control Officer, may, at the owner's expense, remove and control the animal if:

- the owner fails to remove the animal after having been notified by the Animal Control Officer that the animal was trespassing; or the animal is an immediate danger to itself, to persons or to another's property.

Any animal so removed shall be subject to the provisions of Sections 5, 6, and 7 of this ordinance in the same manner as an at large dog.

Section 14 – License and Registration Required

No dog shall be kept within the limits of the Town of York unless such dog is licensed in accordance with the Statutes of the State of Maine, MRSA sections 3923-A and 3923-C and regulations of the Town of York. This requirement shall be the responsibility of the owner (see definition) of the dog(s).

Section 15 – Tags and Stickers

The Town Clerk shall provide with each new license issued for a dog a tag indicating the year the license is issued and such other information as may be required under 7 MRSA subsection 3922-B. The tag remains with the dog for as long as the dog is kept in the Town of York. At each license renewal, the Town Clerk shall provide a sticker indicating the year for which the license is valid. The sticker must be attached to the back of the tag. The owner shall make sure that the sticker is securely attached to the back of the tag. The owner shall make sure that the tag is securely attached to a collar of leather, metal or material of comparable strength and that the collar is worn at all times by the dog for which the license was issued except when hunting, in training or in an exhibition. When the dog is hunting, in training or in an exhibition, its owner shall produce proof of license within twenty-four hours upon request by the Animal Control Officer. If a sticker and tag are lost, the owner shall obtain a new license, tag, and sticker. The Town Clerk shall issue another license tag and sticker upon presentation of the original license and payment of one dollar. The Clerk shall retain the one-dollar for a recording fee.

Section 16 – Rabies Tags

Rabies tags obtained from a veterinarian for immunization against rabies must be securely attached to a collar of leather, metal or material of comparable strength that must be worn by the dog for which the tag was issued except when the dog is hunting, in training or in an exhibition or on the premises of the owner. When the dog is hunting, in training or in an exhibition, its owner shall produce proof of license and proof of rabies immunization within twenty-four hours upon request of the Animal Control Officer.

Section 17 – Violations/Penalties

Any person who violates this ordinance shall be subject to a civil penalty of \$100.00 for the first offense, \$150.00 for the second offense, and \$250.00 for the third and subsequent offenses, except as provided in Section 5 and Section 7.

Section 18 – Waiver / Payment of Fines

Any person charged with a violation of this section, shall be allowed to waive such violation and tender to the Town of York the fine amount if paid within 20 days of issuance of the summons. If the waiver fine is paid, no appearance before a District Court Judge or other judicial officer shall be required. If the offender pays the waiver fine, the matter will be closed in the York Police Records system and listed as a subsequent offense for future violations.

If the offender chooses not to pay the waiver fine, he/she shall appear in court on the specified date to answer for the ordinance violation. If the offender is found to have committed the offense in court, fines, applicable court fees, attorney's fees, and prosecution costs may apply.

Section 19 – Severability Clause

If any part of this ordinance shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this ordinance.

Note: The May 20, 2006 version of this Ordinance was re-created as a Word file by the Community Development Department on November 3, 2010, and the amendments passed on November 2, 2010 were made to this document. The mis-match of sections listed in the table of content and in the text was in the original document. This should be corrected the next time this Ordinance is amended.

ARTICLE II. DOMESTICATED CHICKENS

Sec. 3-51. Purpose.

The purpose of this article is to provide standards for the keeping of domesticated chickens. It is intended to enable residents to keep a small number of female chickens on a non-commercial basis while limiting the potential adverse impacts on the surrounding neighborhood. The City recognizes that adverse neighborhood impacts may result from the keeping of domesticated chickens as a result of noise, odor, unsanitary animal living conditions, unsanitary waste storage and removal, the attraction of predators, rodents, insects, or parasites, and non-confined animals leaving the owner's property. This article is intended to create licensing standards and requirements that ensure that domesticated chickens do not adversely impact the neighborhood surrounding the property on which the chickens are kept.

Sec. 3-52. Permit Required.

An annual permit is required for the keeping of any domesticated chickens in the City of South Portland. Additionally, a building permit is required for the construction of a henhouse and chicken pen.

(a) The annual permit to keep chickens is personal to the permittee and may not be assigned. In the event the permittee is absent from the property for longer than sixty (60) days, the permit shall automatically terminate and become void.

(b) The first permit year shall be September 25, 2007 through December 31, 2008. Thereafter the permit year shall be January 1 through December 31. In the first permit year, no more than twenty (20) permits shall be issued. In each subsequent permit year, twenty (20) more permits may be issued in addition to new permits issued to previous permittees.

Sec. 3-53. Fees

The fee for an annual permit to keep chickens is twenty-five dollars (\$25.00). In addition, a twenty-five dollar (\$25.00) fee shall be required for the building permit for the construction of a henhouse or chicken pen.

Sec. 3-54. Number and Type of Chickens Allowed.

(a) The maximum number of chickens allowed is six (6) per lot regardless of how many dwelling units are on the lot. In the case of residential condominium complexes without individually owned back yards, the maximum number of chickens allowed is six (6) per complex.

(b) Only female chickens are allowed. There is no restriction on chicken species.

Sec. 3-55. Non-Commercial Use Only.

Chickens shall be kept as pets and for personal use only; no person shall sell eggs or engage in chicken breeding or fertilizer production for commercial purposes. The slaughtering of chickens is prohibited.

Sec. 3-56. Enclosures.

(a) Chickens must be kept in an enclosure or fenced area at all times. During daylight hours, chickens may be allowed outside of their chicken pens in a securely fenced yard if supervised. Chickens shall be secured within the henhouse during non-daylight hours.

- (b) Enclosures must be clean, dry, and odor-free, kept in a neat and sanitary condition at all times, in a manner that will not disturb the use or enjoyment of neighboring lots due to noise, odor or other adverse impact.
- (c) The hen house and chicken pen must provide adequate ventilation and adequate sun and shade and must both be impermeable to rodents, wild birds, and predators, including dogs and cats.
- (d) Henhouses.

- (1) A henhouse shall be provided and shall be designed to provide safe and healthy living conditions for the chickens while minimizing adverse impacts to other residents in the neighborhood.

- (a) The structures shall be enclosed on all sides and shall have a roof and doors. Access doors must be able to be shut and locked at night. Opening windows and vents must be covered with predator- and bird-proof wire of less than one (1) inch openings.
- (b) The materials used in making the structure shall be uniform for each element of the structure such that the walls are made of the same material, the roof has the same shingles or other covering, and any windows or openings are constructed using the same materials. The use of scrap, waste board, sheet metal, or similar materials is prohibited. The henhouse shall be well-maintained.
- (c) The structure shall be painted; the color shall be uniform around the structure and shall be in harmony with the surrounding area.

- (2) Henhouses shall only be located in rear yards, as defined in Sec. 27-201. For a corner lot or other property where no rear yard exists, a side yard may be used as long as the setbacks generally applicable in the zoning district are met. In no case may a henhouse be placed in the front yard.

- (3) If a henhouse is proposed to be located less than twenty (20) feet from any side or rear property line, the Code Enforcement Officer shall notify abutting property owners by mail at least twenty (20) days before issuing a permit, except that the permit may be issued in fewer than 20 days if all abutters have responded before the expiration of that time. For henhouses proposed to be located within twenty (20) feet from the side or rear property line, the burden of proof is on the applicant to demonstrate that the proposal will meet the criteria of this article and will not adversely impact the use or enjoyment of abutting properties.

(e) Chicken Pens.

- (1) An enclosed chicken pen must be provided consisting of sturdy wire fencing buried at least 12" in the ground. The pen must be covered with wire, aviary netting, or solid roofing. The use of chicken wire is not permitted.

(Ord. No. 6-10/11, 9/20/10 [Fiscal Note: Less than \$1000])

Sec. 3-57. Odor and Noise Impacts.

- (a) Odors from chickens, chicken manure, or other chicken-related substances shall not be perceptible at the property boundaries.
- (b) Perceptible noise from chickens shall not be loud enough at the property boundaries to disturb persons of reasonable sensitivity.

Sec. 3-58. Lighting.

Only motion-activated lighting may be used to light the exterior of the henhouse.

Sec. 3-59. Predators, Rodents, Insects, and Parasites.

The property owner shall take necessary action to reduce the attraction of predators and rodents and the potential infestation of insects and parasites. Chickens found to be infested with insects and parasites that may result in unhealthy conditions to human habitation shall be removed by the Animal Control Officer.

Sec. 3-60. Feed and Water.

Chickens must be provided with access to feed and clean water at all times; such feed and water shall be unavailable to rodents, wild birds and predators.

Sec. 3-61. Waste Storage and Removal.

Provision must be made for the storage and removal of chicken manure. All stored manure shall be covered by a fully enclosed structure with a roof or lid over the entire structure. No more than three (3) cubic feet of manure shall be stored. All other manure not used for composting or fertilizing shall be removed. In addition, the henhouse, chicken pen and surrounding area must be kept free from trash and accumulated droppings. Uneaten feed shall be removed in a timely manner.

Sec. 3-62. Application for permit.

Every applicant for a permit to keep domesticated chickens shall:

- (a) Complete and file an application on a form prescribed by the Code Enforcement Officer;
- (b) Deposit the prescribed permit fee with the Code Enforcement office at the time the application is filed.

Any material misstatement or omission shall be grounds for denial, suspension or revocation of the permit.

Sec. 3-63. Approval of permit.

The Code Enforcement Officer shall issue a permit if the applicant has demonstrated compliance with the criteria and standards in this article.

Sec. 3-64. Denial, suspension or revocation of permit.

The Code Enforcement Officer shall deny a permit if the applicant has not demonstrated compliance with all provisions of this article.

A permit to keep domesticated chickens may be suspended or revoked by the Code Enforcement Officer where there is a risk to public health or safety or for any violation of or failure to comply with any of the provisions of this article or with the provisions of any other applicable ordinance or law.

Any denial, revocation or suspension of a permit shall be in writing and shall include notification of the right to and procedure for appeal.

Sec. 3-65. Appeal.

A person appealing the issuance, denial, suspension or revocation of a permit by the Code Enforcement Officer may appeal to the Board of Appeals within thirty (30) days of the decision being appealed.

Sec. 3-66. Penalty.

In addition to any other enforcement action which the city may take, violation of any provision of this article shall be a civil violation and a fine not exceeding one-hundred dollars (\$100.00) may be imposed. Each day that a violation continues will be treated as a separate offense.

Sec. 3-67. Removal of Chickens

In addition to the penalty stated in Sec. 3-68, any violation of the provisions of this article or of the permit shall be grounds for an order from the Code Enforcement Officer to remove the chickens and the chicken-related structures.

The Health Inspector, Health Officer, or Animal Control Officer may also order the removal of the chickens upon a determination that the chickens pose a health risk.

If a chicken dies, it must be disposed of promptly in a sanitary manner.

Sec. 3-68. Annual Report to City Council

On or before December 31 annually, the Code Enforcement Officer shall submit to the City Council a report stating the number of permits issued in the permit year, the number of complaints reported in the permit year, the nature of any enforcement activities, and any other information relevant to the oversight of provisions in this article.

Sec. 3-69. Separability.

In the event that any section, subsection or portion of this article shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or portion of this article.

(Ord. No. 4-07/08, 9/5/07 [Fiscal Note: Less than \$1000])

Sec. 3-69 through 3-70 Reserved.

(Ord. No. 13-07/08, 5/5/08 [Fiscal Note: Less than \$1000])

CITY OF SOUTH PORTLAND – DEPARTMENT OF PLANNING & DEVELOPMENT

ANNUAL PERMIT TO KEEP CHICKENS

AN ANNUAL PERMIT IS REQUIRED FOR THE KEEPING OF ANY DOMESTICATED CHICKENS IN THE CITY OF SOUTH PORTLAND. ADDITIONALLY, A BUILDING PERMIT IS REQUIRED FOR THE CONSTRUCTION OF A HENHOUSE AND CHICKEN PEN. THE ANNUAL PERMIT TO KEEP CHICKENS IS PERSONAL TO THE PERMITTEE AND MAY NOT BE ASSIGNED. IN THE EVENT THE PERMITTEE IS ABSENT FROM THE PROPERTY FOR LONGER THAN SIXTY (60) DAYS, THE PERMIT SHALL AUTOMATICALLY TERMINATE AND BECOME VOID.

Application Fee \$25.00 _____

Application #201 _____

Permit #201 _____

Application Date: _____

Date Permit Issued: _____

Address: _____

Property Owner: _____ Phone # _____

Permittee: _____ Phone # _____

Email address of permittee _____

Number of Chickens to be kept: _____

Note: Maximum number of chickens allowed is six (6). Only female chickens are allowed.

YOUR SIGNATURE ACKNOWLEDGES RECEIPT OF ORDINANCE #4-07/08 WHICH DETAILS DEFINITIONS, PURPOSE AND STANDARDS FOR KEEPING CHICKENS.

Applicant Signature

Date

APPROVED

Date

THIS PERMIT EXPIRES 12/31/201_____

CITY OF SOUTH PORTLAND
DEPARTMENT OF PLANNING & DEVELOPMENT
496 OCEAN STREET
P.O. BOX 9422
SOUTH PORTLAND, MAINE 04116-9422
PHONE: 207-767-7603
FAX: 207-767-2197

ARTICLE II. DOMESTICATED CHICKENS

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- (b) Enclosures must be clean, dry, and odor-free, kept in a neat and sanitary condition at all times, in a manner that will not disturb the use or enjoyment of neighboring lots due to noise, odor or other adverse impact.
- (c) The hen house and chicken pen must provide adequate ventilation and adequate sun and shade and must both be impermeable to rodents, wild birds, and predators, including dogs and cats.
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(Ord. No. 6-10/11, 9/20/10 [Fiscal Note: Less than \$1000])

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Sec. 3-66. Penalty.

In addition to any other enforcement action which the city may take, violation

of any provision of this article shall be a civil violation and a fine not exceeding one-hundred dollars (\$100.00) may be imposed. Each day that a violation continues will be treated as a separate offense.

Sec. 3-67. Removal of Chickens

In addition to the penalty stated in Sec. 3-68, any violation of the provisions of this article or of the permit shall be grounds for an order from the Code Enforcement Officer to remove the chickens and the chicken-related structures.

The Health Inspector, Health Officer, or Animal Control Officer may also order the removal of the chickens upon a determination that the chickens pose a health risk.

If a chicken dies, it must be disposed of promptly in a sanitary manner.

Sec. 3-68. Annual Report to City Council

On or before December 31 annually, the Code Enforcement Officer shall submit to the City Council a report stating the number of permits issued in the permit year, the number of complaints reported in the permit year, the nature of any enforcement activities, and any other information relevant to the oversight of provisions in this article.

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In the event that any section, subsection or portion of this article shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or portion of this article.

(Ord. No. 4-07/08, 9/5/07 [Fiscal Note: Less than \$1000])

Sec. 3-69 through 3-70 Reserved.

(Ord. No. 13-07/08, 5/5/08 [Fiscal Note: Less than \$1000])

BRUNSWICK

DOMESTICATED CHICKENS*

Sec. 4-61. Purpose.

The purpose of this article is to provide standards for the keeping of domesticated chickens. The article is intended to enable residents to keep a small number of female chickens while limiting the potential adverse impacts on the surrounding neighborhood.
(Ord. of 10-19-09)

Sec. 4-62. Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Chicken pen. An enclosure connected to a henhouse for the purpose of allowing chickens to leave the henhouse while remaining in an enclosed, predator-safe environment.

Enclosure. The combined area of a henhouse and chicken pen.

Henhouse. A structure for the sheltering of female chickens. A legally existing nonconforming detached shed, garage or barn that may be located within the required district setback can be used for this purpose if it meets all other standards contained in this article.

Sec. 4-63. Keeping of domesticated chickens located in the growth area.

- (a) No more than six (6) chickens shall be allowed per single-family detached dwelling property. No chickens shall be permitted within multi-family complexes, including duplexes.
- (b) Only female chickens are permitted with no restriction on chicken species.
- (c) Chickens shall be kept only for personal use.
- (d) Advertising the sale of eggs, chicken breeding or fertilizer production is prohibited.
- (e) Outside slaughtering of chickens is prohibited.

Sec. 4-64. Enclosure.

- (a) Chickens must be kept in a secure henhouse or chicken pen area at all times. At no time shall chickens be kept in a residence including attached structures.
- (b) Chickens shall be secured within the henhouse during nondaylight hours.
- (c) Enclosures must be clean, dry and odor-free, kept in a neat and sanitary condition at all times, in a manner that will not disturb the use or enjoyment of abutters due to noise, odor or other adverse impact.

- (d) An enclosure shall not be located in the front yard.

Sec. 4-65. Henhouse.

(a) A henhouse shall be provided and designed to provide safe and healthy living conditions for the chickens while minimizing adverse impacts to abutters.

(b) The structures shall be fully enclosed with latchable doors and windows. Windows and vents must be covered with predator and birdproof wire of less than one-inch openings.

(c) The henhouse shall be well maintained. The use of scrap, waste board, sheet metal, or similar materials for the construction of the structure is prohibited.

(d) Henhouses shall only be located in rear yards. In the case of a corner lot, a side yard may be used in accordance with applicable zoning district setbacks but in no case shall the henhouse be closer than ten (10) feet to the side property line.

(e) No henhouse shall be located within ten (10) feet of a rear or side property line.

Sec. 4-66. Chicken pens.

(a) Chicken pens may be provided. Where provided, the chicken pen shall be attached to the henhouse and the walls shall be constructed of sturdy wire fencing, other than chicken wire, and buried at least twelve (12) inches in the ground. The roof shall be covered with wire, aviary netting, chicken wire or solid roofing in a manner to prevent the escape of chickens.

(b) Chicken pens shall only be located in rear yards. In the case of a corner lot, a side yard may be used in accordance with applicable zoning district setbacks but in no cases shall the henhouse be closer than ten (10) feet to the side property line.

(c) No chicken pen shall be located within ten (10) feet of a rear or side property line.
(Ord. of 10-19-09, § IV)

Sec. 4-67. Odor, noise and lighting.

(a) Odors from chickens, chicken manure, or other chicken-related substances shall not be perceptible at the property boundaries.

(b) Perceptible noise from chickens shall not be a disturbance to abutters.

(c) Only motion-activated lighting may be used to light the exterior of the henhouse.

Sec. 4-68. Waste storage and removal.

Provision must be made for the storage and removal of chicken manure. All stored manure shall be

covered by a fully enclosed structure with a roof line or lid over the entire structure. All other manure not used for composting or fertilizing shall be removed from the property.

Sec. 4-69. Licensing requirements.

A person who keeps domesticated chickens shall obtain a license for a fee of ten dollars (\$10.00). The license shall expire annually on the last day of April. The license shall be issued by the town clerk after favorable inspection by the Brunswick Animal Control Officer or designee. The ten dollar (\$10.00) fee is nonrefundable if the license is not approved. There will be a late fee assessed to licenses that have expired, in the amount of ten dollars (\$10.00). The fine will double after the license has been expired for more than thirty (30) days.

Sec. 4-70. Penalty.

In addition to any other enforcement action which the town may take, violation of any provision of this article shall be a civil violation and a fine not exceeding one hundred dollars (\$100.00) may be imposed. Each day that a violation continues will be treated as a separate offense.

Sec. 4-71. Removal of chickens.

Any violation of the provisions of this article or of the license shall be grounds for an order from the code enforcement officer to remove the chickens and the chicken-related structures. The animal control officer may also order the removal of the chickens upon a determination that the chickens pose a health risk. If a chicken dies, it must be disposed of promptly in a sanitary manner.
(Ord. of 10-19-09, § IX)

City of Biddeford, ME
Thursday, April 21, 2016

Chapter 10. Animals

Article III. DOMESTICATED CHICKENS

[Adopted 6-7-2011 by Ord. No. 2011.33]

Sec. 10-55. Purpose.

- (a) The purpose of this article is to provide standards for the keeping of domesticated chickens within the City of Biddeford. This article is intended to reduce the potential for conflicts between neighbors that may arise if the keeping of domesticated chickens creates a nuisance. A nuisance may be created when the keeping of domesticated chickens is not done in a way that maintains the health, safety and welfare of the community. This includes, but is not limited to, noise, odor, unsanitary animal living conditions, unsanitary waste storage and removal, the attraction of rodents and parasites/insects, nonconfined animals leaving the owner's property.
- (b) It is the responsibility of all owners of these animals to maintain conditions that will improve, rather than detract from, the quality of life outside of the RF Zone.

Sec. 10-56. Permit required.

[Amended 11-20-2012 by Ord. No. 2012.111]

A permit is required from the Code Enforcement Office for the keeping of domesticated chickens. Additionally, a building permit is required for the construction of a henhouse and chicken pen, or the conversion of any existing structure or portion of structure. A building permit shall not be required for a pre-built chicken coup that is less than 80 square feet. The permit is specific to the permittee and may not be assigned. In the event that the keeping of chickens is discontinued for longer than six months, the permit shall become void. Any fees related to domesticated chickens shall be set by City Council after a public hearing.

Sec. 10-57. Fencing and screening.

- (a) Fencing shall be erected to confine animals to an established area of the property. The fencing shall be of a height that does not allow the animals to leave the fenced-in area without human assistance. Fencing shall take into account existing conditions in the neighborhood. Appropriate types of fencing include chicken wire, stockade, and picket. The use of chain-link fencing for the enclosure of domesticated chickens is prohibited in the City.
- (b) Vegetative buffering must be used to completely screen the area from abutting properties when non-solid fencing is used. Free ranging shall be permissible in the RF Zone. Upon receiving more than one complaint, the owner of the chickens shall meet the fencing and screening requirements.

[Amended 11-20-2012 by Ord. No. 2012.111]

Sec. 10-58. Waste storage and removal.

Provision must be made for the storage and removal of chicken manure to the satisfaction of the Animal Control Officer. All stored manure shall be covered by a fully enclosed structure with a roof or lid over the entire structure, except for a properly maintained compost pile. No more than three cubic feet of manure shall be stored at one time. In addition, the henhouse, chicken pen and surrounding area must be kept free from trash and accumulated droppings. Odors from chickens or chicken manure shall not be perceptible at the property.

Sec. 10-59. Lighting.

Lighting to protect domesticated chickens from predators and intruders shall be a ninety-degree cut-off luminaire. All lighting must be set to a motion detector so that the lighting is turned off when no motion is detected.

Sec. 10-60. Proximity to bodies of water.

In cases where the domesticated chickens are kept on a property within 100 feet of a body of water or drainageway, provisions must be made to control the runoff of pollution to the body of water. To accomplish this goal, all manure must be kept within a roofed enclosure.

Sec. 10-61. Insects and parasites; rodents.

- (a) The property owner shall take necessary action to reduce the infestation of insects and parasites. Domesticated chickens found to be infested with insects and parasites that may result in unhealthy conditions to human habitation shall be removed by the Animal Control Officer. The Animal Control Officer may delay the removal of the animals through the establishment and completion of a plan of action.
- (b) The property owner shall take necessary action to prevent the entry of rodents and/or predators into the domesticated chickens living area. Domesticated chickens that are not housed in an environment that prevents the infestation of rodents may be removed by the Animal Control Office.

Sec. 10-62. Number of animals per lot.

[Amended 11-20-2012 by Ord. No. 2012.111]

The maximum number of chickens allowed is six per lot regardless of the number of dwelling units on the lot. In the RF and SR-1 Zones, a maximum number of chickens shall be 12 per lot. Only female chickens are allowed. There is no restriction on chicken species. Chickens must be kept in a clean, dry and odor-free enclosure or fenced area at all times. During daylight hours, chickens may be allowed outside of the chicken pen in a securely fenced yard in a manner that will not disturb the use or enjoyment of neighboring lots due to noise, odor or other adverse impact. Chickens shall be secured within the henhouse during non-daylight hours.

Henhouses and chicken pens shall only be located in rear yards, and are subject to a ten-foot setback from all property lines. For a corner lot or other property where no rear yard exists, a side yard may be used as long as the ten-foot setback is met. A henhouse shall not be placed in a front yard.

Sec. 10-63. Prohibit acts.

No person shall sell eggs or engage in chicken breeding or fertilizer production for commercial purposes.
The slaughtering of chickens is prohibited.

Urban farming growing in popularity

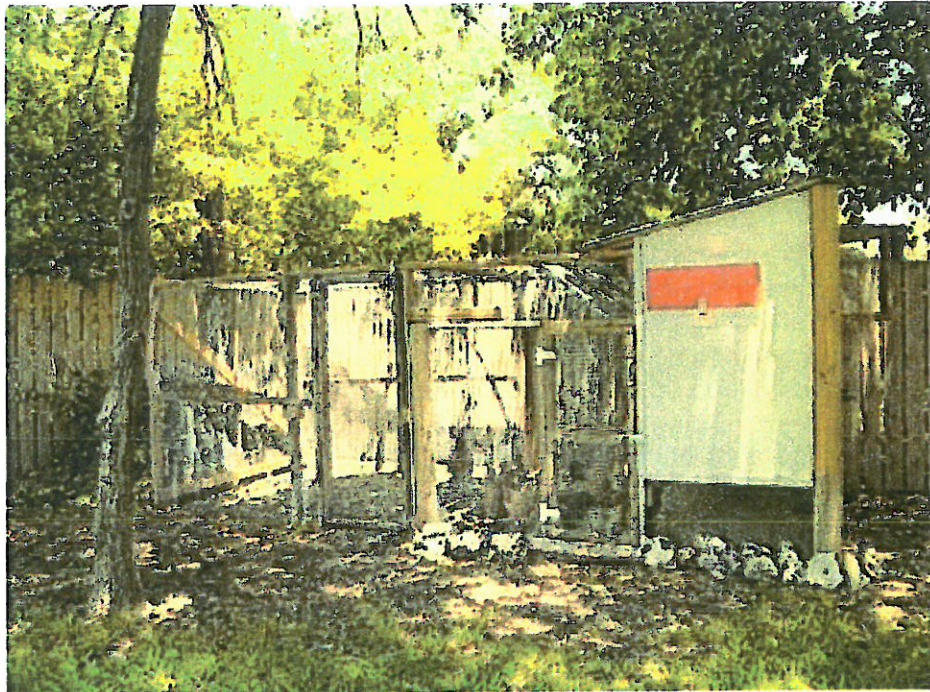
cm www.centralmaine.com/2011/11/28/urban-farming-growing-in-popularity/

By Erika Riggs, Zillow

Do your [neighbors](#) make strange clucking sounds? Have you noticed any nasal-awaking scents of earthy fertilizer?

With a local food movement, a downsized economy and more people eager to find practical and hands-on methods of satisfying some basic needs, it could mean finding yourself living amongst chickens, goats, rows of lettuce or a forest of towering tomato vines.

Additional Photos



This home in Austin, Texas, features a backyard chicken coop.

Search photos available for purchase: [Photo Store](#) →

Welcome to the new era of urban farming.

Residents within the limits of many U.S. cities are learning that some neighbors want to make more full use of their property. And that has put some pressure on municipalities to revisit local laws that regulate the occupancy and management of animals and crops.

[According to the USDA](#), urban farming is booming with around "15 percent of the world's food now grown in urban areas." The numbers have been goosed thanks to national, local and healthy food advocates like Michelle Obama and [her White House garden](#) and Detroit Mayor Dave Bing, who has a plan for converting vacant lots into farm space. The new interest in urban gardening and farming could push the movement beyond the victory gardens during World War II.

Erik Knutzen, author of "The Urban Homestead," "Making it: Radical Home Ec for a Post-Consumer World" and the blog [rootsimple.com](#), said several factors are in play.

"Bad economic times get people thinking about common sense ways to use their yards. Why grow a lawn when you can grow food?" Knutzen said. "People are also concerned about where their food comes from. There's been a lot of scandals with our factory farm system and the only way to deal with it is to grow your own."

Many urban governments see it as a way to encourage healthy living. It is also a way for people to make a connection with nature. Judi Gerber, who writes the blog [LA Farm Girl](#), said urban farming can take shape in different ways, including a "mini-farm literally on one acre of more or even just a backyard edible garden."

In all its forms, however, urban farming ultimately requires the support of the city, otherwise the lack of regulation pits neighbor against neighbor in a conflict over appropriate land use.

In July 2011, a woman in Oak Park, MI — a suburb of Detroit — was criminally charged for growing a vegetable garden in front yard space, [reported ABC News](#).

This incident makes it apparent that municipalities should have codes in place that citizens can easily understand so they are not unwittingly violating laws. Gerber suggests to check city, county and local laws and regulations that may limit how and what you grow and whether you can have farm animals at all. (Gerber says where she lives in L.A. prohibits animal husbandry.)

While some suburbs, like Oak Park, have shut down urban farms, some cities embrace it completely:

- [Seattle, WA](#): Allows residents to keep up to three small goats on standard lots. Residents with larger lots may keep up to four small animals, with additional animals permitted depending on lot size.
- [Cleveland, OH](#): Residents can keep up to eight chickens or rabbits on a regular-size urban lot.
- [San Francisco, CA](#): Up to four small animals total kept 20 feet from doors or windows in a coop or enclosure of approved type.
- [Los Angeles, CA](#): Unlimited number of chickens with space requirements.
- [Denver, CO](#): \$50 chicken permit plus additional annual \$70 fee.
- [Miami, FL](#): May have up to 15 hens, no roosters. But must be contained at least 100 feet from neighboring structures. The [South Florida Food Policy Council](#) advises cities on best urban farm practices.
- [Detroit, MI](#): No "farm animals."
- [New York City, NY](#): Chickens are considered pets but must be kept following the specific Health Code.
- [Houston, TX](#): Chickens may be kept on a lot which measures at least 65 feet X 125 feet.

But regardless of your city codes, it's best to be on good terms with your neighbors, said Knutzen. In places where some things aren't legal, you can organize your neighbors and change the law.

"Some of my friends and neighbors helped change the code in Los Angeles to make growing fruit, flowers and nuts in a residential zone and selling them legal," he said. "There's some folks in LA working on making bees legal."

If you're interested in starting your own urban farm, start researching local regulations and zoning laws, advises Gerber.

"As for gardening," says Knutzen, "It's really important to get a soil test if you're considering [buying a house](#)."

Contact a local lab and get a test for soil fertility as well as heavy metals such as lead, chromium and arsenic.”

With the growth of urban farming, Gerber advises that you check resources for the new gardener or chicken keeper.

“Get all the information you can before you get started,” Gerber said. “Take garden classes via local extension offices or master gardener programs, and use online and traditional print resources.”

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